16-315

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1054.

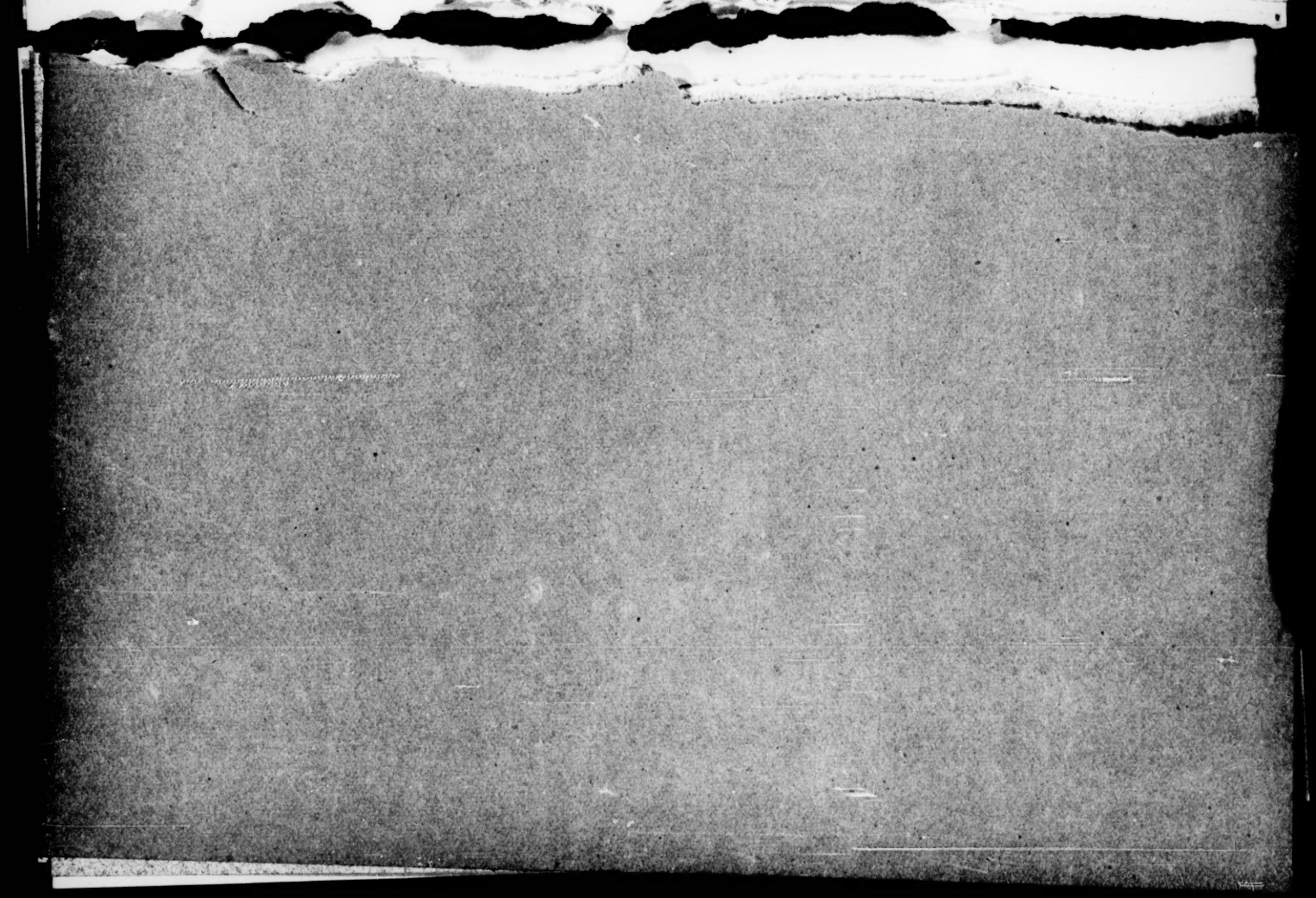
MARY E. KIRK, WIDOW OF R. M. PASTEUR, DECEASED, AND NATURAL TUTRIX OF EFFIE MAY PASTEUR, MARY KIRK PASTEUR, AND SALLIE KATIE PASTEUR, APPELLANT,

vs.

WILLIAM LYND AND ROBERT N. LEWIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 12, 1882.



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a UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

MARY E. KIRK, WIDOW OF RICHARD M. PASTEUR, natural tutrix, &c.,
versus
WILLIAM LYND AND ROBERT N. LEWIS. } No. 9459.

R. Stewart Dennee and William Reed Mills, esq's, for appellants.
Thomas L. Bayne and John A. Campbell, esq's, for appellees.
Transcript of appeal returnable to the Supreme Court of the United States, at the city of Washington, D. C., the second Monday of October, A. D. 1882.

1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

MARY E. KIRK, WIDOW OF RICHARD M. PASTEUR, natural tutrix,
versus
WILLIAM LYND AND ROBERT N. LEWIS. } No. 9459.

Bill of complaint with Exhibits A & B.—Filed May 24th, 1881.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana.

Mary Elizabeth Kirk, widow of Richard M. Pasteur, late deceased, in her capacity of duly recognized and qualified natural tutrix of Effie May Pasteur, Mary Kirk Pasteur, and Sallie Katie Pasteur, as per letters of tutorship issued by the civil district court for the parish of Orleans,
2 on the 23d April, 1881, marked "Exhibit A," hereto annexed, a citizen of the State of Louisiana, and resident of the city of New Orleans, brings this her bill of complaint against William Lynd and Robert N. Lewis, citizens of the State of Louisiana, and residing in the city of New Orleans, and thereupon your oratrix complains and shows:

I. That said Richard Mason Pasteur, jointly with Christopher Ned Pasteur, was during his life-time, to wit, before and on the 17th November, 1863, seized in fee-simple as owner and in possession of the certain piece of ground of irregular form situate in faubourg Lacourse, of this city, being the square designated by the No. four on the plan of said faubourg, deposited in the office of Louis T. Caire, notary, in this city, which square is composed of ten lots numbered from one to ten, both inclusive, as per said plan, together measuring, French measure, 120 feet front on New Levee street (formerly public road), 360 feet front on Richard street, 300 feet front on Tchoupitoulas street (formerly Old Levee),
3 180 feet front on Market street, thence 180 feet front on Market Place, and thence 180 feet deep up to the place of beginning on

New Levee street, together with all the buildings and improvements thereon, formerly known as the Bramer press, subsequently as the Tyler press, and now as the Virginia press; and being the property jointly acquired by said Richard M. Pasteur and Christopher N. Pasteur by purchase from Laurent Millandon by act of sale before E. G. Gottschalk, notary public of this city, on July 1, 1859, as more fully shown and set forth by duly certified copy of said notarial act of sale, hereto annexed as Schedule B.

II. Your oratrix further shows that on or about 17th November, 1863, in virtue of the act of Congress approved on the 6th August, 1861, entitled "An act to confiscate the property used for insurrectionary purposes," said property was seized by the marshal of the United States for the district of Louisiana in the suit entitled and numbered "United States vs. The Cotton Press, &c., in square Tchoupitoulas, Richard, New
4 Levee, and Market streets, No. 3389 of the docket of this court, in which said property was libelled and forfeited to the United States for the owners therein mentioned, and that such further proceedings were had in said suit that on the 13th January, 1866, the said property was sold under and by virtue of said decree of condemnation of the 5th December, 1865, all of which will more fully appear by the record and proceedings in said suit No. 3389, on file in this court, and herein respectfully referred to for greater certainty.

III. Your oratrix further shows that by the seizure and condemnation of said property the estate of Richard Mason Pasteur, as well as the estate of Christopher Ned Pasteur therein, was forfeited for and during the terms, respectively, of their natural lives.

Your oratrix further shows that said Richard Mason Pasteur deceased on the 3d May, 1874, leaving as his next of kin and sole heirs his said minor children Effie May, May Kirk, and Sallie Katie, and his
5 children of age, Francis J. Pasteur, Alice Pasteur, and Georgiana Pasteur, wife of William E. Kirk, residing in the city of New Orleans, and in whom, as said heirs, said described forfeited property, to the extent of one undivided half, at the death of said Richard Mason Pasteur, vested in virtue of the Constitution of the United States, and specially the second (2) paragraph of section three (3) of article three (3) thereof.

IV. Your oratrix further shows that at the death of said Richard M. Pasteur the said property was in possession of those who claimed the right of possession thereto from and under the title derived by the United States through said decree of forfeiture of 5th December, 1865, and under which defendants, and those from whom they acquired title and possession, have held and possessed said property continuously, and the fruits, revenues, and value for use thereof enjoyed.

V. Your oratrix further shows that under and in virtue of which title of forfeiture defendants, and those from whom they acquired possession of said property, have since the death of said Richard M. Pasteur
6 held said property to the extent of one undivided half, its fruits, revenues, and value for uses as the trustees of oratrix, said wards Effie May, Mary Kirk, and Sallie Katie, and their said coheirs Frances T., Alice, and Georgiana.

VI. Your oratrix further shows that the exact times at which defendants, and those from whom and under whom they held, since the said

heirs of Richard M. Pasteur at his death became joint owners of the undivided half of said property, and the respective periods during which said possessors were in enjoyment thereof, its fruits, revenues, and value for use, as also the amount and value of said fruits, revenues, and value for use, are unknown to your oratrix; that the facts touching all these matters are material to the care of your oratrix, and that the discovery of them by codefendants is indispensible as proof.

VII. Your oratrix further shows that she has applied to said
7 defendants to deliver to her the undivided one-fourth part, and allow her the peac'able enjoyment of the joint possession of said property, for the use and benefit of said minors, Effie May, Mary Kirk, and Sallie Katie, and account for the rents, revenues, and value for use for the same since said defendants came into possession of the same; and your oratrix had well hoped that the said defendants would have complied therewith, as in equity and good conscience they ought to have done.

But now, so it may please your honors, the said defendants, to injure your oratrix and her said minor children, now absolutely refuses to deliver to her, as natural tutrix aforesaid, the undivided one-fourth of said property, and allow her the peaceable enjoyment of its joint possession, or to account for and pay to her the annual rents, revenues, and value for use, with interest thereof; sometimes pretending that through and by reason of the proceedings including said seizure, libel, and decree of forfeiture had
8 in said suit No. 3389, the estate of the said Richard Mason Pasteur was forfeited beyond his natural life, and that through and by reason of the marshal's adjudication of the 13th January, 1865, made under and by virtue of said decree of forfeiture, the adjudicated at said sale, as also subsequently, his vending including defendants acquired an estate and fee in said property beyond the respective life-time of the owners on whose consent to the criminal use of said property the same was libeled and its forfeiture decreed as aforesaid.

Whereas your oratrix expressly charges the contrary of all these pretenses to be true, and that under the Constitution of the United States, and the said 2d paragraph of 2d section of the 3d article thereof, the estate of said Richard M. Pasteur, in and to said property, could be forfeited and condemned during only his natural life, and that beyond which duration Congress had no Constitutional power to declare, authorize, or enact, and
9 the said circuit court no jurisdiction to decree a forfeiture or sale of said Richard M. Pasteur's undivided half of said property, and that at his death the same became vested in his heirs as aforesaid.

VIII. Your oratrix further shows that since the said 3d May, 1874, and while in defendant's possession, said property has been used by them in the carrying on of the business of storing and compressing cotton for public use, and which business has been of such a complicated character that an account thereof as herein demanded cannot be properly taken except in a court of equity, and that the value of said undivided fourth of said property exceeds twenty thousand dollars.

To the end therefor' that the said defendants may, if they can, show why your oratrix should not have the relief hereby prayed, and may upon their corporal oaths, according to the best and utmost of their knowledge, information, and belief, full, true, direct, and perfect answer make to the interrogatories herein set forth, that is—

Interrogatory 1st. Whether the property mentioned and described herein yields a revenue, and what is the amount of such revenue annually? Whether derived from rents or how otherwise? How long have you been in possession of or derived revenue from it, enjoyed the use of said property described in this bill? And what has the annual value of said rents, revenues, and value for use been, one year with another, since the 3d May, 1874?

Interrogatory 2d. Whether defendant's right of possession to said property is not that claimed to have been derived through mesne conveyance from the certain adjudication made on the 13th January, 1866, under a writ of venditioni exponas in the certain suit entitled and numbered United States vs. Ten Lots of Ground, &c., No. 3389, of the docket of the United States circuit court for the district of Louisiana, hereinbefore in this bill set forth? If yea, state the respective parties to and date of said mesne conveyance.

And that said defendants may answer all and singular the matters and charges aforesaid as fully and particularly in every respect as if the same were again repeated, and thus thereunto particularly interrogated.

And that said defendants may be decreed to hold the said undivided fourth part of said property as trustees for said miners, Effie, May, Mary, Kirk and Sallie Katie, and make full discovery of the matters and things herein set forth, and that they may be decreed to deliver to your oratrix in her said capacity of natural tutrix the joint possession of said property to the extent of one undivided fourth part thereof, together with the annual rents, revenues, and value for use thereof, and interest; and that an account be taken of the said rents, revenues, and value for use, from the time subsequent to the 3d May, 1874, the said property was taken possession of by said defendants, with interest thereon, and that said defendants be decreed in solido to pay the same to your oratrix, and that your oratrix may have such further or other relief as the nature of her case shall require and as shall be agreeable to equity.

Your oratrix further prays, if in discretion of the court it should be necessary or advisable, that said Frances T. Pasteur, Alice Pasteur, and Georgiana Pasteur, and her husband, William E. Kirk, may be made parties complainant to this bill in order that the rights of your oratrix in the premises may not be defeated; and oratrix avers that she is ready and willing to give said Frances T., Alice, Georgiana, and William E., full and adequate security against any and all damages and costs for which they may be liable by reason of being so made parties to this bill, in such amount and in such form as your honors shall direct.

And may it please your honors to grant unto your oratrix the writ of subpœna in due form of law, to be directed to the said defendants, commanding them by a certain day and under a certain penalty therein to be inserted to be and appear before this honorable court and then and there to answer the premises and further perform and abide such further order, direction, and decree therein as shall be agreeable to equity and good conscience and as to your honors shall seem meet.

And your oratrix will, as in duty bound, ever pray, etc.

(Signed) R. STEWART DENNEE,
Do. WM. REED MILLS, *Solicitors.*

Exhibit A.—Filed with bill.—Letters of tutorship.

SUCCESSION OF RICHARD MASON PASTEUR. } No. 3076.

State of Louisiana, civil district court for the parish of Orleans, Division D.

This shall certify to all whom it may concern that on the twenty-first day of April, in the year of our Lord 1881, an application was made to the Hon. N. H. Rightor, judge of the civil district court for the parish of Orleans, division D, by Mary Elizabeth Kirk, widow of Richard M. Pasteur, praying that she might be admitted to take her oath as natural tutrix of her minor children, Effie May Pasteur, Mary Kirk Pasteur, and Sallie Kate Pasteur.

14 Now, know ye that the said May Elizabeth Kirk, widow of Richard M. Pasteur, has been confirmed as natural tutrix of her aforesaid minor children, and has on the 23d day of April, 1881, taken her said oath as such, and has complied with all the other requisites of the law.

Witness our hands and the seal of the civil district court this 23d day of April, A. D. 1881.

[SEAL.] (Signed) A. H. RIGHTOR, *Judge.*
Do. EUG. D'HERETÉ,
Dy Clerk.

A true copy.
(Signed) EUG. D'HERETÉ,
Dy Clk.

Exhibit B.—Filed with bill.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day, before me, Edward G. Gottschalk, a notary public in and for this city, and parish of Orleans, State of Louisiana,
15 aforesaid, duly commissioned and sworn, personally came and appeared, Laurent Millaudon, of this city, who declared that for the consideration hereinafter set forth he does by these presents grant, bargain, and sell, with all legal warranties and with subrogation to all his rights and actions in warranty against all preceding vendors or possessors, unto Christopher Neel Pasteur and Richard Mason Pasteur, copartners in this city under the firm of C. N. Pasteur & Brother, joint and equal purchasers, present, acknowledging possession and accepting for themselves, their heirs and assigns, a certain piece or portion of ground of an irregular form, situate in the faubourg Lacourse, of this city, being the square designated by the number four on the general plan of said faubourg, deposited in the office of the late Louis T. Caire, notary public, in this city, which square is composed of ten lots of ground, numbered from one
16 to ten, inclusive, as per said plan, measuring as per plan, together, French measure, one hundred and twenty feet front on New Levee treet (formerly public road), three hundred and sixty feet front on Richard street, three hundred feet front on Tchoupitoulas street (formerly Old

Levee), one hundred and eighty feet front on Market street, thence one hundred and eighty feet front on Market place, and thence one hundred and eighty feet deep up to the place of beginning on New Levee street, together with the buildings and improvements thereon and appurtenances thereof, heretofore known as the Brama press and now called the Tyler press, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in any wise appertaining.

Lots Nos. four to ten, inclusive, were acquired by said Millaudon at a sale made by the sheriff of this parish on the twenty-first of July, 1835, in execution of a writ of seizure and sale to him directed by the late first judicial district court of this State in the suit of L. Millaudon vs. Silvestre Pere and Fils, No. 10317, as per sheriff's deed dated 14th
17 of August, 1835, recorded in the clerk's office of said court in book D, folio 188. Lots one and three were acquired by said Millaudon together with A. Miller from F. Livaudais, by act passed before the late L. T. Caire, notary, on the 25th of June, 1828, and by act passed before T. Seghers, late notary public in this city, on the 9th of February, 1830, said Miller unto him, said Millaudon, his portion of said two lots of ground; and lot No. two was acquired by said Millaudon by purchase from Alexander Rentoule, per act passed before said L. T. Caire, notary, on the seventh of May, 1831.

To have and to hold the said property unto the said purchasers, their heirs and assigns, to their only proper use and behoof forever.

The said vendor declared that he is neither tutor nor curator of any minors, interdicted persons, or absentees, and he produced unto me, notary, the tax receipts for the year 1858.

This sale is made for and in consideration of the price and sum
18 of one hundred and twelve thousand three hundred and sixty-two dollars and fifty cents, which the said vendor hereby acknowledges to have received in the twenty-three several promissory notes of said purchasers drawn by them in solido to their own order and by them endorsed, dated this day: One for twenty-five hundred and fifty-six dollars and twenty-five cents, payable in three months (2,556.25); one for twenty-six hundred and twelve $\frac{50}{100}$ dollars, payable in six months (2,612.50); one for twenty-seven hundred and twenty-five dollars, payable in one year (2,725); two each for five thousand four hundred and fifty dollars, and one for ten thousand nine hundred dollars, all payable in one year (21,800); and sixteen each for five thousand dollars, payable respectively, four at two years, four at three years, four at four years, and four at five years (80,000); the first seven notes bearing interest at the rate of eight per cent. per annum from maturity, if not then paid, until final liquidation ($112,362.50), and the sixteen other notes bearing interest at seven per cent. per annum from date until maturity, and eight per cent.
19 per annum from maturity till paid, and are all domiciliated at the Louisiana State Bank, in this city, which notes have been duly paraphed ne varietur by me, notary, to identify the same herewith.

And to secure the payment of said notes in capital and all interest thereon as aforesaid special mortgage in favor of said vendor and of any other holder or holders of said notes is hereby retained on said property, the said purchasers hereby binding themselves and their heirs not to alienate nor encumber the same to the prejudice of this act.

The said purchasers shall have the privilege of renewing the said note of ten thousand nine hundred dollars, payable in one year, for one year from its maturity, by paying interest for such renewal at eight per cent. per annum, to be added to said note.

The said purchaser shall also have the right of taking down the sheds on the side of Market street and Market place in order to put the same on a piece of ground to them belonging, fronting on Market street.

20 The said purchasers bind themselves to keep the buildings and improvements on said portion of ground constantly insured against loss by fire, up to their full value, and to transfer the policies of insurance to said vendor until the full and final payment of said notes, hereby consenting that the said vendor shall have the right to transfer such policies to any future holder or holders of said notes, and that in case of failure of the said purchasers to effect such insurance the holder or holders of said notes shall have the right to do so, and the reimbursement of all sums paid for that purpose shall be secured by mortgage on said property, but this clause shall not be construed as obligatory on such holder or holders, or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings.

By reference to the annexed certificate of the recorder of mortgages in and for this parish it appears that said property now stands incumbered.

21 1st. By the mortgage granted by said Millaudon before me, notary, on the twelfth of June, 1856, in favor of Louis F. Generet, to secure fifteen thousand dollars, interest, and costs.

2d. By the mortgage granted by said Millaudon in favor of the minor Francois Edmond Burthe, by act passed before me, notary, on the twenty-fifth of March, 1859, to secure ten thousand three hundred and seventy-six dollars thirty-five cents and interest.

3rd. By the general mortgages in favor of Mrs. Marie Marthe Elmire Montreuil, wife of said Millaudon, resulting from four act', executed before O. de Armas, notary, on the twentieth of August, 1830, before G. Legardeur, late notary, on the first July, 1833, and before P. Lacoste, notary, on the twelfth July and fourth August, 1838, by which acts said Millaudon has taken charge of a total sum of twenty-seven thousand and ninety-six dollars ninety-eight cents, by him received for account of his said wife, to which mortgages she will hereafter renounce.

22 The said Millaudon declared that he will cause the two firstly-mentioned mortgages to be cancelled in the shortest possible delay, and he binds himself to keep the said purchasers harmless from the effects thereof, and as a guarantee to said purchasers he has deposited with me, notary, the notes granted by them, payable in three, four, and five years, being twelve in number, the same to remain deposited until the said vendor shall have produced a certificate showing said two firstly-mentioned mortgages to have been cancelled, and should either or all of said notes fall due before said mortgages are erased, then the said purchasers shall pay the amount thereof into the hands of the undersigned notary, to be kept by him in like manner till said mortgages shall have been cancelled.

It is also agreed that in case it shall become necessary to institute legal proceedings for the recovery of the amount of the said notes, or of any

part thereof, the said purchasers bind themselves to pay the fees of
23 the attorney at law, who may be employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued for, and are to stand secured by mortgage on the presently sold property.

The said purchasers shall also, as they hereby bind themselves, pay all taxes due or to become due on said property for the current year.

And thereupon personally came and appeared and intervened in this act the said Mistress Marie Marthe Elmire Montreuil, wife of said Millaudon, who being herein duly authorized and assisted by her said husband, took cognizance of the foregoing act of sale, which I, notary, carefully read and explained to her, and having so done, she declared that it was her intention not only to ratify said sale, but to make renunciation of all rights she has by mortgage or otherwise on the property therein conveyed, upon which I, notary, declared to her separately and apart from her said husband, and out of his presence, as it is my duty, that by the laws
24 of this State she possessed a general mortgage on all the property of her said husband, and upon that of the community, in case she should renounce thereto: first for the restitution of her dower and the reinvestment of dotal property brought by her in marriage; second, for the restitution of dotal property by her acquired during marriage, by inheritance or otherwise; third, for indemnity against all debts contracted, or which she might hereafter contract, with her said husband; fourth, for such of her paraphernal property and funds as may have been alienated by her said husband, or which he has had, or may have, the administration or enjoyment, or of which he may otherwise have benefitted; fifth, for nuptial presents made to her by her said husband or others; that in making her intended renunciation she would deprive herself irrevocably and forever of all rights of reclamation against said property, whether under mortgage privilege or otherwise. Whereupon the said wife declared that she still persisted in the intention she had announced to ratify said sale and to dispossess herself of all rights and liens
25 which she has upon said property, whether by marriage contract, dower, donation, or otherwise; and the said husband being now again present before me, and authorizing his said wife, she again declared that she does hereby formally renounce, henceforth and forever, all and singular her said rights, and transfer the same to the said purchasers, their heirs and assigns, to be had and held by them and by them enjoyed in law and thereout; and she hereby binds herself and her heirs to the said purchasers, their heirs and assigns, that she and they shall and will at all times acknowledge the validity of the present sale and of the renunciation she now makes of all rights which she has or may have in and to said property so sold, and that neither she nor they shall ever seek to oppose or impair the force of this act, hereby renouncing the benefit of all laws, privileges, and customs of which she might avail herself, or which are in her favor in the premises.

26 Done and passed at New Orleans the first day of July, eighteen hundred and fifty-nine, in presence of Selim Magner and Forester

Brugier, witnesses residing in this city, who have signed their names with the parties and me, notary.

(Signed) C. N. PASTEUR.
R. M. PASTEUR.
L. MILLANDON.
ELMIRE MILLAUDON,
Née Montricul.
S. MAGNER.
F. BRUGIER.
E. G. GOTTSCHALK, *N. P.*

A true copy of the original act in the records of E. G. Gottschalk, notary public, and which records are in my custody.

New Orleans, November 30th, 1863.

(Signed) S. MAGNER, *Not. Pub.*

Record No. 3389 referred to in the foregoing bill of complaint, entitled The United States vs. The Cotton Press, &c., in square Tchoupitoulas, Richard, New Levee, and Market streets.

27 *Libel of information.—Filed Nov. 17th, 1863.*

To the honorable judges of the sixth judicial circuit of the United States, sitting in and for the eastern district of Louisiana.

The libel of information of Rufus Waples, attorney of the United States for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court in his own proper person, in the name and behalf of the said United States of America, and Wm. H. Hire, informant, against the building formerly used as a cotton press, in the square bounded by Tchoupitoulas, Richard, New Levee, and Market sts., with the ground on which it stands, hereinafter described, and against all persons intervening for their interest therein in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

1. That James Graham, esq., marshal of the United States for the said district, under written authority given him by the said attorney, in compliance with instructions issued by the Attorney-General of the
28 United States to the district attorney thereof, and by virtue of the act of Congress approved on the sixth day of August, in the year A. D. 1861, entitled "An act to confiscate property used for insurrectionary purposes," heretofore, that is to say, on the 10th day of November, A. D. 1863, seized as forfeited to the United States, at New Orleans, within said district, and within the jurisdiction of this court, the following-described property, to wit: The building formerly used as a cotton press or yard for storing cotton situated in the square bounded by Tchoupitoulas, Richard, New Levee, and Market streets, and occupying the whole of said square, more or less, together with the ground on which the said press or yard stands; that is to say, a piece or portion of ground described in the records of the conveyance office of the parish of Orleans, as follows: a certain piece or portion of ground of an irregular form, situate in the faubourg Lacourse of this city, being the square designated by the No. four on the general plan of said faubourg, deposited in the office of the

29 late Louis T. Caire, notary in this city, which square is composed of ten lots, numbered from one to ten, inclusive, as per said plan, measuring as per said plan, together, French measure, 120 feet front on New Levee street (formerly public road), 360 feet front on Richard street, 300 feet front on Tchoupitoulas street (formerly Old Levee), 180 feet front on Market street; thence 180 feet front on Market place, and thence 180 feet deep, up to the place of beginning, on New Levee street, together with all the buildings and improvements thereon and appurtenances thereof, known as the Brama press, now called the Tyler press, and all the rights, ways, servitudes, &c.

The above-described property exceeds in value the sum of five hundred dollars.

2. That by the act of the Congress of the United States, approved August 6th, 1861, entitled "An act to confiscate property used for insurrectionary purposes," it was provided "That if during the present or any future insurrection against the Government of the United States after the President of the United States shall have declared by proclamation that the laws of the United States are opposed, and the execution
30 thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person, or persons, his, her, or their agent, attorney, or employee, shall purchase, or acquire, sell, or give any property of whatever kind or description, with intent to employ the same, or suffer the same to be used or employed in aiding, abetting, or promoting such rebellion or resistance to the laws, or any person or persons engaged therein; or if any person or persons, being the owner or owners of any such property, shall knowingly use or employ, or consent to the use or employment of the same as aforesaid, all such property is hereby declared to be lawful subject of prize and capture wherever found; and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned."

3d. That the President of the United States did, on the 15th of
31 April, 1861, declare by proclamation "That the laws of the United States are opposed, and execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law," and that on the 16th of August, 1861, he did reiterate said proclamation, and did declare that "such insurrection" still existed and had not been suppressed.

4th. 1st. That the property hereinabove described was used and employed knowingly by the owner or owners thereof in aiding and abetting and promoting the said insurrection and resistance to the laws, within the meaning of the said act of Congress after the approval of the said act, and after the public proclamations of the President above mentioned, and after the 16th day of August, 1861, by being used as a camp or rendezvous by persons in arms against the Government of the United States.

2d. That the property herein described was used and employed knowingly by the owner or owners thereof in aiding and abetting per-
32 sons engaged in the said insurrection and resistance to the laws, within the meaning of the said act of Congress after the approval of the said act, and after the public proclamations of the President above mentioned, and after the 16th day of August, 1861, by being used as a

camp or rendezvous by persons in arms against the Government of the United States.

3d. That the said property was purchased or acquired (torn out.)

4th. That the owner or owners of the said property did knowingly consent to the use or employment of it for the purpose of aiding and abetting and promoting said insurrection and resistance to the laws, or of aiding, abetting, and promoting persons engaged therein after the approval of said act, and after the proclamations above mentioned, and after the 16th August, 1861, by being used as a camp or rendezvous for persons in arms against the Government of the United States.

5th. That the owner or owners of said property, his, her, or their
33 agent or employee, did suffer said property to be used or employed in aiding, abetting, and promoting the insurrection proclaimed by the President as aforesaid, and in aiding, abetting, and promoting a person or persons engaged in said insurrection after the approval of act above mentioned, and after the proclamation of the President duly made public on the 16th day of August, 1861, by permitting it to be used for the above purposes.

5th. That by reason of the premises the property herein described became and was forfeited to the United States and ought to be confiscated and condemned to the use of the said United States.

Wherefore the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property, and the owner or owners thereof, and against all persons interested or claiming an interest therein, warning them, at some early day to be named therein, to appear and answer this libel of information,
34 and that an order of publication may be made in the usual form; and that, all due proceedings being had, this honorable court may be pleased to decree for the condemnation and forfeiture of the said property to the use and ownership of the said United States and of said Wm. H. Hire, informant. And he prays for such further relief as the court is competent to give in the premises.

(Signed) RUFUS WAPLES,
United States Attorney for the Eastern District of Louisiana.

On motion of the district attorney it is ordered that he have leave to amend the libel in this case without re-engrossing the same by adding thereto the description of the property as given by the conveyance office and the allegation that said property is above the value of five hundred dollars.

A true copy.
Clerk's office. N. Orleans, January 4th, 1864.
(Signed) F. B. VINOT,
Dy Clk.

35 *Order of publication annexed to the foregoing libel.*

United States circuit court for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES *vs.* THE COTTON PRESS, &C., IN SQUARE TCHOUPITOULAS, RICHARD, NEW LEVEE, AND MARKET STREETS.	No. 3389.

Whereas certain property described in the libel filed by the district att'y and now of record in this court, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in any wise appertaining, and all the right, title, and interest therein, has been seized by the marshal of the United States for the eastern district of Louisiana, by virtue of an act of Congress approved on 6th day of August, A. D. 1861, entitled "An act to confiscate property used for insurrectionary purposes;" and whereas the United States attorney for the eastern district of Louisiana did, on the 17th day of
36 November, 1863, file a libel of information in this court praying the condemnation of said property and real estate under the act aforesaid, and that process of monition issue against the owner or owners of said property and real estate, and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information:

It is therefore on this 18th November, A. D. 1863, ordered that notice be given to the owner and owners of said property and real estate, and all persons interested or claiming an interest therein to appear and answer this information on the 7th day of December, 1863, and show cause, if any they have, why said property and real estate, and the right, title, and *and* interest should not be condemned and sold according to law; and that notice be given by posting a copy of this order upon the front door of the court-house, of the district, and by publication in the Era
37 newspaper twice a week previous to said 7th day of December, 1863, the first publication to be on or before the 21st inst.

New Orleans, Nov. 18th, 1863.

(Signed) E. H. DURELL, *Judge*.

Warrant.—Issued November 18th, 1863.

The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the following-described property: The building formerly used as a cotton-press or yard for storing cotton, situate in the square bounded by Tchoupitoulas, Richard, New Levee, and Market streets, and occupying the whole of said square, more or less, together with the ground on which the said press or yard stands, together with all the improvements, rights, privileges, appurtenances, and other hereditaments thereunto belonging, now libelled by the United States for the causes set forth in the li-
38 bel pending in the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana; that you do cite

and admonish the owner or owners, and all and every other person or persons having or pretending to have any right, title, or interest in or to the same, to be and appear before a circuit court of the United States for the district aforesaid to be holden at the city of New Orleans on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said should not be condemned and sold agreeably to the prayer of the libellant; and how you have executed this warrant, that you make due return according to law.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 18th day of Nov'r, A. D. 1863, and 88th year of the Indepen'ce of the United States.

[SEAL.] (Signed) F. B. VINOT, *Dy Clk.*

39 *Intervention of Citizens' Bank of Louisiana.—Filed December 7th, 1863.*

To the honorable the judge of the United States circuit court for the sixth judicial district & eastern district of Louisiana:

In pursuance of public notice given by James Graham, United States marshal for said United States circuit court, in the case of the United States vs. The Cotton-press, &c., in square Tchoupitoulas, Richard, New Levee, and Market streets, No. 3389 of the docket of this court, to the owner or persons having or pretending to have any right, title, or interest in the same property to be and appear at a circuit court of the United States for the district aforesaid, to show cause, if any they have or can, why the said property should not be condemned and forfeited *in* the United States, agreeably to the prayer of the libellants:

Now comes into court the Citizens' Bank of Louisiana, a corporation created by law and located in the city of New Orleans, who, reserving their rights to all exceptions if necessary and intervening for their interest, exhibits this her libel against the property of Christopher Neal Pasteur and Richard Mason Pasteur, herein seized, taken, and now in the possession and custody of the marshal of this court in virtue of warrant
40 issued therefrom in the above-entitled case, said property being as follows, to wit:

Seven lots of ground, with the buildings and improvements thereon, rights, ways, privileges, & appurtenances thereunto belonging, situate in the faubourg Labourse, first district of this city, & designated by the numbers 1 to 7, inclusive, of square 37½, on plan drawn by T. A. D'Hemecourt, surveyor, on the 9th of April, 1859, and deposited, as plan No. 30, in the office of Theodore Guyol, esq., notary public.

Lot No. 1 measures 29 feet 3 inches & 7 lines front on New Levee street by 9 feet in depth and front on Market street, & 29 feet 4 inches in width in the rear.

Lot No. 2 adjoins No. 1, and measures 29 feet 3 inches 7 lines front on New Levee street 90 feet in depth & 29 feet 4 inches and 1 line in width in the rear.

Lot No. 3 adjoins No. 2, and measures 29 feet 3 inches and 8 lines front on New Levee street 90 feet in depth, & 29 feet 4 inches and 1 line in width in the rear.

Lot No. 4 adjoins No. 3, and measures 29 feet 3 inches and 7 lines

front on New Levee street and 90 feet in depth, & 29 feet 4
41 inches & 1 line in width in the rear.

Lot No. 5 adjoins lot No. 4, and measures 29 feet three inches & 7 lines front on New Levee street, 29 feet 4 inches in width in the rear, and 90 feet in depth, and front' on a short street not named.

Lot No. 7 adjoins the rear of the above-described lot, and measures 28 feet 6 inches and three lines front on Market street, 146 feet 8 inches 8 lines in depth, and the line adjoining the rear of the lots No. 1 to 5; 146 feet 8 inches and 6 lines in depth on the other side adjoining lot No. 6, and 28 feet 6 inches and 3 lines in width on the rear fronting on the short street above mentioned.

And lot No. 6 adjoins lot No. 7, and measures 28 feet 6 inches & 4 lines front on Market street, the same in width as the rear fronting on the short street above referred to; 146 feet 8 inches and 6 lines in depth on the side adjoining lot No. 7, and 146 feet 9 inches and 1 line in depth on the other side, fronting on another street not named, all American measure.

And said intervenor alleges and articulately propounds as follows:

That said Citizens' Bank of Louisiana, intervenor, is creditor by
42 mortgage and vendor's privilege of Christopher Neal Pasteur & Richard Pasteur, 1st, in the sum of seven hundred and forty-eight dollars, $12\frac{12}{100}$, it being the amount of certain promissory notes by them drawn to their own order, & by them endorsed on the 5th May, 1859, payable three years after date, bearing interest at 6 % from date to maturity, & from maturity at 8 % till paid, which said note was protested for non-payment.

2d. In another sum of $534.37\frac{1}{2}$, it being the amount of another note drawn & endorsed by the same parties, by them endorsed on the same day, and payable also three years after date, bearing the same rate of interest than the note firstly described, which said note was unpaid at its maturity.

3d. In another sum of $500, balance due on another note of $534.37\frac{1}{2}$ *dollars*, also drawn by said C. N. Pasteur and R. M. Pasteur, on the same day, 5th May, 1859, to their own order, and by them endorsed, payable three years after date, with interest at 8 % from the 8th day of May 1862, to which said day its payment had been extended.

4. In another sum of $800, it being the amount, with interest, on a certain note of $748.12\frac{1}{2}$, also drawn by the same parties, by them
43 endorsed on the aforesaid day, 5' May, 1859, also payable three years after date, bearing interest at the same rate, and on account of a settlement made with the makers and the intervenors the payment of the balance due, $800, was extended to the 8th of May, 1862, and it remains now due. Said sum of $800, with interest at 8 % from said date, 8' of May, 1862, till paid, all said notes signed ne varietur by Th. Guyol, esq., notary public.

That in order to secure the payment of said above-described notes and the interest, as stipulated, said purchasers, by an act passed before Theodore Guyol, esq., a notary public, on the 11th of June, 1859, granted a special mortgage & vendor's privilege in favor of any holder or holders of the above-described notes.

That all the above allegations appear from said four notes, instrument of protest, and act of mortgage, containing the sale of said lots herein seized, said notes, protest, act of sale filed with this intervention, annexed to it as part of said intervention, and marked A, B, C, D, E, F.

That by the laws of Louisiana the property of said C. N. and R. M. Pasteur is the common pledge of all their credit, this intervenor is
44 entitled to be paid the amount of their indebtedness owing to the Citizens' Bank of Louisiana, in preference over other creditors and over the claims of the United States, out of the property of said C. N. Pasteur & R. M. Pasteur, now under seizure aforesaid.

Wherefore the Citizens' Bank of Louisiana, intervenors, pray that this honorable court do pronounce in favor of their demand, and that they be recognized as mortgage creditors, with vendor's privilege of said C. N. Pasteur and R. M. Pasteur, in the manner and form for the amount above stated:

1st. In the sum of $748.12½, with 6 % interest from 6' May, 1859, to the 8th of May, 1862, and from this last date 8 % per annum till paid.

2d. In the sum of $534.37½, with 6 % interest from the 5th May, 1859, up to the 8th May, 1862, and 8 % from this last date till paid.

3d. In the sum of $500, with 8 % interest from 8' May, 1862, till paid.

4th. In the sum of $800, with 8 % from the 8th of May, 1862, till paid, and that in case of sale of the property seized in this case, and mortgaged to your intervenors, be ordered, adjudged, and the decree that the
45 United States marshal of this court shall pay into the hands of this intervenor in preference of all creditors of said C. N. Pasteur and R. M. Pasteur, even the United States, out of the proceeds of the sale of said property, the above specified amounts in principal and interest, and your intervenors pray for costs, in which shall be taxed $3.50 costs of protest, and $5 costs of the copy of act of sale and mortgage; and said intervenors further pray for such other and further relief and redress as to right, justice, and equity may appertain & as the court is competent to give in the premises.

(Signed). L. CASTERA,
Att'y for Intervenors.

J. D. Denegre, being duly sworn, deposes and says that he is the president of the Citizens' Bank of Louisiana, and that said bank is the bona fide creditor of C. N. Pasteur and R. M. Pasteur, as set forth in the above petition, and that all the facts and allegations contained in said petition are true and correct to the best of his knowledge and belief.

(Signed) JAMES D. DENEGRE.

Sworn to and subscribed before me this 7th Dec'r, 1863.

(Signed) F. B. VINOT,
D'y Clk.

46 *Petition and intervention of Laurent Millaudon.—Filed December 9th, 1863.*

To the honorable the judges of the United States circuit court, sixth judicial circuit and eastern district of Louisiana:

The petition and intervention of Laurent Millaudon, a loyal citizen of the United States, & resident of the city of New Orleans, most respectfully sheweth:

That in the suit entitled The United States vs. The Cotton Press, etc.,

in Square Tchoupitoulas, Richard, New Levee, and Market streets, being suit No. 3389 of the docket of this court, and in obedience to a warrant issued in this court directed to James Graham, United States marshal, the said James Graham has seized and taken into his possession the buildings formerly used as a cotton press or yard for storing cotton, situate in square bounded by Tchoupitoulas, Richard, New Levee, and Market streets, and occupying the whole of said square, more or less, together with the ground on which the said press or yard stands, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging, or in any wise appertaining, and all the right, title,
47 or interest therein, libelled by the United States for the reasons assigned and set forth in the libel in the hereinbefore-entitled suit pending in this court as aforesaid. And the said James Graham, acting as aforesaid, has at the same time cited and admonished the owner or owners thereof, and all persons having or pretending to have any right, title, or interest in or to the same, to be and appear at this court "to shew cause, if any they have, or can, why the said property should not be condemned and forfeited to the United States, agreeably to the prayer of the libellants."

And in pursuance of this notice & monition this petitioner and intervenor sheweth further that by an act of sale passed on the first day of July, 1859, before E. G. Gottschalk, then a duly qualified notary public in and for the city of New Orleans, the same identical property, including the ground and all the buildings and improvements thereon libelled as aforesaid in this suit & by the said James Graham seized and taken into his possession as aforesaid, was sold by him to the present owners, namely, C. N. Pasteur and R. M. Pasteur, then co-partners in this city of New Orleans, under the firm of C. N. Pasteur & Brother, an authentic copy of said deed being hereto annexed and is expressly made part and parcel of this petition and intervention. That as a part of the consideration and
48 price of said sale the said C. N. Pasteur and Brother, joint and equal purchasers, have delivered to this petitioner and intervenor fifteen several promissory notes, each for five thousand dollars, dated the first day of July, 1859, & payable, respectively, three at two years, four at three years, four at five years, and four at five years, all bearing interest at seven per cent. per annum from date until maturity till paid & are domiciliated at the Louisiana State Bank in New Orleans. That these notes are secured by special mortgage with the vendor's lien on the property sold as aforesaid in favor of any and all holders thereof, the said purchasers binding themselves at the same time in the said deed not to alienate the same to the prejudice of said privilege and mortgage. That the said notes remain yet unpaid with the sole exception of one of them which has been by partial payments reduced to the sum of three thousand and eighty-four dollars and eleven cents, bearing interest at 8 % per annum from the 26' day of March, 1862, till paid. That this petitioner and intervenor is the holder and owner of thirteen of the notes aforesaid, and being endorser to the two others he is liable for the payment thereof and has therefore an ac-
49 tual and vested interest in the recognition and enforcement of the vendor's lien by which they are secured, copies of all of said notes being hereto annexed and are expressly made part of this petition and intervention.

And now this petitioner and intervenor avers that the payment of the

notes aforesaid is secured by the highest privilege known to the law, to wit, the vendor's lien; that he is therefore entitled to be heard herein for the enforcement of his just rights upon the property libelled and seized as aforesaid; that first and foremost he opposes the said libel filed against the said property, he denies all and singular the charges and specifications therein contained, either against the said property or the owners of said property, and he particularly denies that the said property was ever used in the manner charged in said libel with the consent of the owners thereof; and, finally, he contends that in the event a decree of condemnation should be rendered against the said property, the notes aforesaid are entitled to be fully paid with interest and all charges by privilege out of the proceeds of the sale of said property.

Wherefore this petitioner and intervenor respectfully prays that
50 he be allowed to file this intervention; that due process of citation and notice be served upon the libellant; that in the course of law the said libel be avoided and the property hereinbefore mentioned be released from seizure, and should the said property be condemned, then and in that case he prays for judgment acknowledging the claim by him exhibited to the court, to wit, fourteen notes for five thousand dollars each, two of which bearing interest at seven per cent. per annum from 1st of July, 1859, until the 3d of July, 1861, and from this last date bearing eight per cent. interest per annum until paid; four others bearing interest at seven per cent. per annum from the 1st of July, 1859, until the 3d of July, 1862, and from this last date until paid bearing interest at eight per cent. per annum; *four others bearing interest at seven per cent. per annum*, four others bearing interest at seven per cent. per annum from the 1st of July, 1859, until the 3d of July, 1863, and from this last date until paid bearing interest at eight per cent. per annum; and four others bearing interest at seven per cent. per annum from the 1st July, 1859, until
51 the 3d July, 1862, and from this last date until paid bearing interest at eight per cent. per annum; and lastly, a note of five thousand dollars, but upon which there is due only a balance of three thousand and eighty-four dollars and eleven cents, with interest at eight per cent. per annum from the 26th of March, 1862, until paid; and furthermore that James Graham, United States marshal, be ordered and instructed to pay to this petitioner and intervenor the claim aforesaid with first privilege and by preference out of the proceeds of the sale of the property so condemned and sold, together with all charges and costs herein incurred, and with twenty-eight dollars for costs of protest on some of the notes before described, and ten dollars and fifteen cents for cost of notarial copies hereunto annexed. And your petitioner and intervenor finally prays for general relief in the premises.

(Signed) CYPRIEN DUFOUR, *Counsel.*

Laurent Millaudon, duly sworn, declares that to the best of his knowledge and belief the foregoing petition and intervention is true, and he
52 is a bona fide creditor for the amount therein set forth, with privilege and vendor's lien, on the property described in the said petition and intervention.

(Signed) L. MILLAUDON.

4184——2

Sworn to and subscribed before me this 9th day of December, 1863.
(Signed) F. B. VINOT,
D'y Cl'k.

Copy of two notes.—Filed December 9th, 1863.

$5,000.] NEW ORLEANS, 1*st July*, 1859.

In solido, two years after date, we promise to pay to the order of ourselves, at the Louisiana State Bank, in this city, the sum of five thousand dollars, with interest thereon at the rate of seven per cent. per annum from date until maturity, and if not then paid, to bear interest from said maturity until final payment at the rate of eight per cent. per annum, for value received.

(Signed) C. N. PASTEUR.
R. M. PASTEUR.

(Written across the face:) Ne varieteur. Secured by mortgage.
New Orleans, 12th July, 1859.

E. G. GOTTSCHALK,
Not. Pub.

(Endorsed:) C. N. PASTEUR. R. M. PASTEUR. L. MILLAUDON.

53 Protested on the 14th of January, 1862. Costs of said protest, $4.

$5,000.] NEW ORLEANS, 1*st July*, 1859.

In solido, two years after date, we promise to pay to the order of ourselves, at the Louisiana State Bank, in the city of New Orleans, the sum of five thousand dollars, with interest thereon at the rate of seven per cent. per annum from date until maturity, and if not then paid, to bear interest from said maturity until final payment at the rate of eight per cent. per annum, for value received.

C. N. PASTEUR.
R. M. PASTEUR.

(Endorsed:) C. N. PASTEUR. R. M. PASTEUR. L. MILLAUDON.

Protest waived on this note, and the said note reduced at present to the sum of $3,084.11, with eight per cent. interest from the 26th March, 1862, till final payment.

Copy of five notes.—Filed December 9th, 1863.

$5,000.] NEW ORLEANS, 1*st July*, 1859.

54 In solido, three years after date, we promise to pay to the order of ourselves, at the Louisiana State Bank, in this city, the sum of five thousand dollars, with interest at the rate of seven per cent. per annum from date until maturity, and if not then paid, to bear interest from said maturity until final payment at the rate of eight per cent. per annum, for value received.

C. N. PASTEUR.
R. M. PASTEUR.

(Written across the face:) Ne varietur Secured by mortgage.
New Orleans, 1' July, 1859.

E. G. GOTTSCHALK,
Not. Pub.

(Endorsed:) C. N. PASTEUR.

Protested by S. Wagner, not. pub., on the 3d July, 1863. Cost of protest, $3, in the name of L. Millaudon.

$5,000.] NEW ORLEANS, *July* 1*st*, 1859.

In solido, three years after date, we promise to pay to the order of ourselves, at the Louisiana State Bank, in this city, the sum of five thousand dollars, with interest thereon at the rate of seven per cent. per annum from date until maturity, and if not then paid, to bear interest from said maturity until final payment at the rate of eight per cent. per annum, for value received.

C. N. PASTEUR.
R. M. PASTEUR.

(Written across the face:) Ne varietur. Secured by mortgage.
New Orleans, 1' July, 1859.

E. G. GOTTSCHALK,
Not. Pub.

(Endorsed:) C. N. PASTEUR. R. M. PASTEUR.

Protested by S. Wagner, not. public, on the 3d of July, 1865. Costs of protest, $3, in the name of L. Millaudon.

55 $5,000.] NEW ORLEANS, *July* 1, 1859.

In solido, three years after date, we promise to pay to the order of ourselves, at the Louisiana State Bank, in this city, the sum of five thousand dollars, with interest thereon at the rate of seven per cent. annum from date until maturity, and if not then paid to bear interest from said maturity until final payment at the rate of eight per cent. per annum for value received.

C. N. PASTEUR.
R. M. PASTEUR.

(Written across the face:) Ne varietur. Secured by mortgage.
New Orleans, July, 1859.

E. G. GOTTSCHALK,
Not. Pub.

(Endorsed:) C. N. PASTEUR. R. M. PASTEUR.

Protested by S. Magner, not. pub., on the 3d of July, 1863. Cost, $3.00, in the name of L. Millaudon

$5,000.] NEW ORLEANS, 1' *July*, 1859.

In solido, three years after date, we promise to pay to the order of ourselves, at the Louisiana State Bank, in this city, the sum of five thousand dollars, with interest thereon at the rate of seven per cent. per annum from date until maturity, and if not then paid to bear interest from said maturity until final payment, at the rate of eight per cent. per annum for value received.

C. N. PASTEUR.
56 R. M. PASTEUR.

(Written across the face:) Ne varietur. Secured by mortgage.
New Orleans, July, 1859.

E. G. GOTTSCHALK,
Not. Pub.

(Endorsed:) C. N. PASTEUR. R. M. PASTEUR.

Protested by S. Magner, not. pub., on the 3d July, 1863. Cost, $3, in the name of L. Millaudon.

$5,000.] NEW ORLEANS, 1 *July*, 1859.

In solido, two years after date, we promise to pay to the order of ourselves, at the Louisiana State Bank, in this city, the sum of five thousand dollars, with interest thereon at the rate of seven per cent. per annum from date until maturity, and if not then paid to bear interest from said maturity until final payment, at the rate of eight per cent. per annum for value received.

C. N. PASTEUR.
R. M. PASTEUR.

(Written across the face:) Ne varietur. Secured by mortgage.
New Orleans, 1' July, 1859.

E. G. GOTTSCHALK,
Not. Pub.

(Endorsed:) C. N. PASTEUR. R. M. PASTEUR.

Protest waived on above note on 3d February, 1861.

Replication.—Filed Jan'y 4th, 1864.

UNITED STATES
vs.
LAURENT MILLAUDON, INTERVENOR IN COTTON-PRESS, &c., in square Tchoupitoulas 57 New Levee, Richard and Market streets. } No. 3389.

To the honorable Edward H. Durell, judge of the circuit court of the United States for the eastern district of Louisiana:

The replication of Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, libellant, to the answer of Laurent Mellaudon, defendant, alleges that he the said libellant will aver, maintain, and prove, that the said answer of the said defendant is uncertain, untrue, and insufficient, and he humbly prays as in and by his said libel he has already prayed.

(Signed) RUFUS WAPLES,
U. S. Dist. Att'y.

Answer.—Filed January 4th.

UNITED STATES
vs.
CITIZENS' BANK OF LA., INTERVENOR IN COTTON-PRESS, &c., &c. } No. 3389.

To the honorable the judges of the sixth judicial circuit of the United States for the eastern district of Louisiana:

The answer of Rufus Waples, attorney of the United States of America

for the said eastern district of Louisiana, who prosecutes herein for
58 the United States in this behalf, to said bill of intervention exhibited by Laurent Mellaudon in this cause.

This defendant, Rufus Waples, attorney of the United States of America in said district, reserving to said United States all right of exception to said bill of intervention of said Citizens' Bank of Louisiana in answer thereto, or unto so much and such parts thereof as he is advised is or are material or necessary for him to make answer unto, answering saith:

That this defendant, attorney as aforesaid, in behalf as aforesaid, expressly denies that the said intervenors the members of the said Citizens' Bank of Louisiana, are loyal citizens of the United States.

And the said defendant, attorney as aforesaid, expressly denies that Christopher Neel Pasteur and Richard Mason Pasteur are indebted to the said intervenor, the Citizens' Bank of Louisiana, 1st, in the sum of seven hundred and forty-eight $\frac{42}{100}$ dolls. with 6% interest from the 5th of May, 1859, to the 8th of May, 1862, and from this last date 8% per annum till paid; 2nd, in the sum of five hundred and thirty-four $\frac{37}{100}$ dolls. with 6% interest from the 5th May, 1859, to the 8th May, 1862, and 8% from this last date till paid; 3d, in the sum of five hundred dollars with
59 8% interest from 8th May 1862, till paid; 4th, in the sum of eight hundred dollars, with 8 per cent. from 8th May, 1862, till paid, as set forth in said intervenors' bill of intervention.

And the said defendants, attorney as aforesaid further expressly denies any and all indebtedness whatever of Christopher Neel Pasteur and Richard Mason Pasteur to the said intervenors, the Citizens' Bank of Louisiana.

Further answering, this defendant, attorney as aforesaid, insists that by virtue of a certain act of the Congress of the United States, approved March 3d, 1863, and entitled "An act to protect the liens upon vessels in certain cases and for other purposes," that in all cases now or hereafter pending wherein any ship, vessel, or other property shall be condemned in any proceeding by virtue of the acts above mentioned or of any other laws on that subject, the court rendering judgment of condemnation shall, notwithstanding *notwithstanding* such condemnation and before awarding such ship, vessel, or other property or the proceeds thereof to the United States or to any informer, first provide for the payment out of the proceeds of such ship, vessel, or other property of any bona fide claims which shall be
60 filed by any loyal citizen of the United States or of any foreign state or power at peace and amity with the United States intervening in such proceeding, and which shall be duly established by evidence as a valid claim against such ship, vessel, or other property under the laws of the United States or of any loyal State thereof; provided, that no such claim shall be allowed in any case where the claimant shall have knowingly participated in the illegal use of such ship, vessel, or other property; and provided also, that this act shall extend to such claims only as might have been enforced specifically against such ship, vessel, or other property in any loyal State wherein such claim arose. The said intervenor, the Citizens' Bank of Louisiana, is not entitled to any relief in this hon. court against the said property seized under said libel, and this defendant, attorney as aforesaid, claims the same benefit as if he had specially pleaded the said statute in this cause, without this, that there is any other matter, cause, or thing in the said intervenor's bill contained material or

61 necessary for this defendant, attorney as aforesaid, to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant, attorney as aforesaid; all of which matters and things this defendant, attorney as aforesaid, is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays that this honorable court will decree that said intervenor's bill be dismissed with costs and charges in this behalf wrongfully sustained.

And as in duty bound will ever pray, etc.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the Eastern District of Louisiana.

Exception of Citizens' Bank.—Filed January 4th, 1864.

UNITED STATES
vs.
CITIZENS' BANK OF LOUISIANA, INTERVENOR in the cotton-press in square, &c. } No. 3389.

To the honorable the judges of the sixth judicial circuit of the United States for the eastern district of Louisiana:

This libellant, Rufus Waples, attorney of the United States of
62 America for the eastern district of Louisiana, who prosecutes for the United States in this behalf, by protestation, not confessing or acknowledging all or any of the matters and things in the said intervenor's bill to be true in such manner and form as the same are therein set forth and alleged, doth, for exceptions to said bill of intervention, allege and show that said bill of intervention is informal and insufficient, as follows:

FIRST EXCEPTION.—For that said bill and petition of intervention shows that said claimants and intervenors are resident of the State of Louisiana, which said State is in rebellion and open resistance to the Government of the United States.

SECOND EXCEPTION.—For that said bill and petition of said intervenor shows no specific lien on or interest in the specific property libelled in this cause that can enforced against the United States in these proceedings.

THIRD EXCEPTION.—For that said intervenors, by their said petition of intervention, do not bring themselves within the act of Congress of the United States entitled "An act to protect the liens upon vessels in certain cases, and for other purposes," approved March 3d, 1863, and made a part of this exception.

63 FOURTH EXCEPTION.—For that said intervenors have not given a stipulation with sureties to abide by the final decree in this cause to be rendered.

Wherefore said Rufus Waples, attorney as aforesaid, who prosecutes as aforesaid humbly demands whether he shall be compelled to make any further answer to said bill of intervention, or any of the matters and things therein contained, and prays that said bill of intervention be dismissed with costs.

(Signed) RUFUS WAPLES,
U. S. District Attorney, for the Eastern District of Louisiana.

Exception of Laurent Millaudon.—Filed January 4th, 1864.

UNITED STATES
vs.
LAURENT MILLAUDON, INTERVENOR IN COTTON press, &c., in square Tchoupitoulas street, &c. } No. 3389.

To the honorable the judges of the sixth judicial circuit of the United States for the eastern district of Louisiana:

This libellant, Rufus Waples, attorney of the United States of
64 America, for the eastern district of Louisiana, who herein prosecutes for the United States in this behalf, by protestation, not confessing or acknowledging all or any of the matters and things in said intervenor's bill to be true, in such manner and form as the same are therein set forth and alleged, both for exceptions to said bill of intervention, allege and show that said bill of intervention is informal and insufficient, as follows:

FIRST EXCEPTION.—For that said bill of intervention shows that said claimant and intervenor is a resident of the State of Louisiana, which said State is in rebellion and open resistance to the Government of the United States.

SECOND EXCEPTION.—For that said bill and petition of said intervenor shows no specific lien on or interest in the specific property libelled in this cause that can be enforced against the United States in these proceedings.

THIRD EXCEPTION.—For that said intervenor, by the said petition of intervention, does not bring himself within the act of Congress of the United States, entitled "An act to protect the liens upon vessels in certain cases, and for other purposes," approved March 3d, 1863, and made part of this exception.

65 FOURTH EXCEPTION.—For that said intervenor has not given a stipulation with sureties to abide by the final decree in this cause to be rendered.

Wherefore said Rufus Waples, attorney as aforesaid, who prosecutes as aforesaid, humbly demands whether he shall be compelled to make any further answer to said bill of intervention, or any of the matters and things therein contained, and prays that said bill of intervention be dismissed with costs.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the Eastern District of Louisiana.

Answer of Laurent Millaudon.—Filed January 4th, 1864.

UNITED STATES
vs.
LAURENT MILLAUDON, INTERVENOR IN COTTON-press, &c., &c. } No. 3389.

To the honorable the judges of the sixth judicial circuit of the United States for the eastern district of Louisiana:

The answer of Rufus Waples, attorney of the United States of America

for the said eastern district of Louisiana, who prosecutes herein
66 for the United States in this behalf, to said bill of intervention exhibited by Laurent Millaudon in this cause.

This defendant, Rufus Waples, attorney of the United States of America for said district, reserving to said United States all of exception to said bill of intervention of said Laurent Millaudon, for answer thereto, or unto so much and such parts thereof as he is advised is or are material or necessary for him to make answer unto, answering, saith:

That this defendant, attorney as aforesaid, expressly denies that the said intervenor, Laurent Millaudon, is a loyal citizen of the United States.

And the said defendant, attorney as aforesaid, further answering, expressly denies that Christopher Neel Pasteur and Richard Mason Pasteur are indebted in the *the* sum of seventy-three thousand eighty-four dollars and eleven cents to the said intervenor, Laurent Millaudon, as alleged in said intervenor's bill of intervention.

67 And the said defendant, attorney as aforesaid, further answering, expressly denies that the said Christopher Neel Pasteur and Richard Mason Pasteur are indebted in any amount whatever to the said intervenor, Laurent Millaudon.

Further answering, this defendant, attorney as aforesaid, insists that by virtue of a certain act of the Congress of the United States, approved March 3, 1863, and entitled "An act to protect the liens upon vessels in certain cases, and for other purposes," that in all cases now or hereafter pending wherein any ship, vessel, or other property shall be condemned in any proceeding by virtue of the acts above mentioned, or of any other laws of that subject, the court rendering judgment of condemnation shall, notwithstanding such condemnation, and before awarding such ship, vessel, or other property, or the proceeds thereof, to the United States, or to any informer, first provide for the payment out of the proceeds of such ship, vessel, or other property of any bona fide claims which shall be filed by any loyal citizen of the United States or of any foreign state or
68 power at peace and *and* amity with the United States intervening in such proceeding, and which shall be duly established by evidence as a valid claim against such ship, vessel, or other property under the laws of the United States or of any loyal State thereof; provided, that no such claim shall be allowed in any case where the claimant shall have knowingly participated in the illegal use of such ship, vessel, or other property; and provided, also, that this act shall extend to such claims only as might have been enforced specifically against such ship, vessel, or other property in any loyal State wherein such claim arose. The said intervenor, Laurent Millaudon, is not entitled to any relief in this honorable court against the said property seized under said libel; and this defendant, attorney as aforesaid, claims the same benefit as if he had specially pleaded the said statute in this cause.

Without this, that there is any other matter, cause, or thing in the said intervenor's bill contained material or necessary for this defendant, attorney as aforesaid, to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is
69 true to the knowledge or belief of this defendant, attorney as aforesaid. All of which matters and things this defendant, attorney as aforesaid, is ready and willing to aver and maintain and prove as this

honorable court shall direct, and humbly prays that this honorable court will decree that said intervenor's bill be dismissed with costs and charges in this behalf wrongfully sustained.

And as in duty bound will ever pray, etc.

(Signed) RUFUS WAPLES,
U. S. District Attorney for the Eastern District of Louisiana.

Motion and order to amend the pleadings of the Citizens' Bank.—Extract from the minutes November term, 1863.

NEW ORLEANS, *Thursday, January 21st*, 1864.

Court met pursuant to adjournment.

Present, Hon. E. H. Durell, district judge.

UNITED STATES
vs.
THE COTTON-PRESS IN SQUARE TCHOUPITOULAS, &c. } No. 3389.

On motion of L. Castera, esq., of counsel for Citizens' Bank, intervenor, it is ordered that said bank be authorized to amend the pleadings in this suit by establishing the loyalty of the officers and directors of said institution.

70

Amended pleadings of the Citizens' Bank of Louisiana.—Filed January 23d, 1864.

U. S. circuit court.

UNITED STATES
vs.
THE COTTON-PRESS, &C., IN SQUARE TCHOUPITOULAS, &c. } No. 3389.

To the honorable the judges of the 6th judicial circuit of the U. S. sitting in and for the eastern district of Louisiana:

The Citizens' Bank of Louisiana, intervenor in the above-entitled case, duly authorized by this honorable court to amend the pleadings herein filed, most respectfully represents:

That said intervenors are loyal citizens of the U. S., and that the board of said bank is composed of the following-named persons, to wit: Jas. D. Denegre, president; N. Chiapella, John G. Gaines, Dom Lanata, W. F. McLean, Peter Marcy, S. Plassan, who has resigned and is now of the State), and that by the certificate of the cashier of said bank hereto annexed and filed the above-named gentlemen constitute the board of said bank, and that each one of them has sworn allegiance to the U. S., in conformity of the order No. 41 of the commanding general of the Gulf and proclamation of the President of the United States, and that the certificate of their oath has been filed in the case of the U. S. vs. The Patterson Iron Works, No. 3385 of the docket of this hon. court, and therefore cannot be annexed to this supplemental pleadings.

71

Wherefore said Citizens' Bank of Louisiana respectfully pray pleadings be so amended that it may please this hon. court to grant in their favor the prayer of their original petition in intervention with costs, and intervenors pray for any further relief.

(Signed) L. CASTERA,
Att'y for Intervenors.

72 Eugene Rousseau, being duly sworn, deposes and says that he is the cashier of the Citizens' Bank of Louisiana, and that all the facts and allegations contained in the above amended pleadings are true and correct to the best of his belief and knowledge.

(Signed) EUG. ROUSSEAU.

Sworn to and subscribed before me this 23d January, 1864.

(Signed) F. B. VINOT, *D'y Cl'k.*

Certificate of cashier.—Filed January 23d, 1864.

CITIZENS' BANK OF LOUISIANA,
New Orleans, Jan'y 22d, 1864.

I hereby certify that the following-named gentlemen constitute the board of directors of the Citizens' Bank of Louisiana, to wit: Messrs. Jas. D. Denegre, president; A. Chiapella, John G. Gaines, Dom Lanata, Wm. F. McLean, Peter Marcy (S. Plassan resigned, leaving one vacancy), and that each of them has taken the oath of allegiance to the United States required by General Order No. 41 under the proclamation of the President of 1862, as per certificates
73 herewith.

(Signed) EUG. ROUSSEAU,
Cashier.

Depositions of witnesses for libellants.—Filed Dec'r 31st, 1864.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

UNITED STATES
vs.
THE COTTON-PRESS IN SQ. TCHOUPITOULAS, Richard, New Levee, & Market streets. } No. 3389.

Present, district attorney, Messrs. Castera & Dufour.

Testimony taken December 27th, 1864, before Charles Claiborne, U. S. commissioner.

HUGH DE LACY, for libellants, sworn, deposes:

I reside in New Orleans. I have been residing here for the last twelve years at the corner of St. Mary and Religious streets. I know the press, called the Tyler press, in the square between Tchoupitoulas, Richard, New Levee, and Market streets. I never saw soldiers there in the year 1861

and beginning of 1862. I never saw the place used for drilling
74 soldiers or citizens.

(Signed) his HUGH + DE LACY. mark.

Sworn to and mark affixed before me this 27th day of Dec'r, 1864.
(Signed) CH'S CLAIBORNE,
U. S. Comm'r.

THOMAS GANNON, sworn for libellants, deposes:

I reside at the corner of St. Mary & Religious streets. I have lived there for six years. The Tyler press was not used, as far as I know, in 1861 & 1862 for drilling soldiers or citizens. I have seen citizens there whenever their business called them there before the war and since.

his THOMAS + GANNON. mark.

Sworn to and mark affixed before me this 27th day of December, 1864.
CH'S CLAIBORNE,
U. S. Comm'r.

B. DONNIGAN, for libellants, sworn, deposes:

I live at the corner of St. Thomas st. & Felicity road. I was
75 brought to the Tyler press to drill. I drilled there under B. Lynch; he was a lieutenant; it was a short time before the fleet came here, about three months. I was lamp-lighter, and occasionally drilled; it was a regular place for drilling once or twice a week. They were drilling there in order to defend their homes. I don't know the captain's name; I think it was a Mr. Lacy. The men who drilled there were unwilling to leave their homes, and drilled there to save themselves. I do not recollect the name of the company. It was not an organized company, and never intended to be organized. The men were drilled there to defend themselves against the negroes in case of an insurrection. I do not say how long they drilled there; it might have been 1, 2, or 3 months. No officers came down from Jefferson City to drill us except B. L. Lynch, the present attorney-general of the State of Louisiana. There were 3 or 4 other officers under Lynch, who was the lieutenant. The company broke up, and was never organized. There were no guns to drill with. Mr. Lynch had
a belt on. I cannot remember if he had a sword. They drilled
76 3 or 4 days after Mr. Lynch left us. There were about 35 in the company. There were no other companies drilling there; there were no soldiers there. There might have been soldiers there after we left.

Cross-examined by Mr. DUFOUR:

We left before the U. S. fleet came here—a few weeks before.

Question. Did any of the citizens assemble' there belong to any army, or were they trying to organize a militia company?

Answer. They were citizens organizing with a view of defending themselves and their homes against the negroes in case of an insurrection.

Direct examination resumed:

Mr. Lynch and the other officers drilled us as officers. I do not know

to what command those officers were attached to. Lieutenant Lynch when he drilled us had a coat on that looked like a military coat. I do not know if Mr. Lynch belonged to the Union Army or not. This drilling took place in the evening after dark.

B. DUNGAN.

Sworn to & subscribed before me this 27th day of December, 1864.

CH'S CLAIBORNE,

77 *U. S. Comm'r.*

TERRENCE COYLE, for libellants, sworn, deposes:

I reside at the corner of Market & Religious streets. I drilled in the Tyler press 3 or 4 months before the fleet came up. I do remember if it was 2 or 3 times a week that we drilled there. Sometimes we drilled for an hour, at other times we would not drill more than a quarter of an hour, and would break up in a row and go home. I cannot remember how long the drilling was kept up there. I do not know if the officers who drilled us there were in the Confederate or Union service. Capt. Nicholson, Lieutenant Oaks, and Lynch drilled us. We drilled without arms. We did not elect any officers that I know of. The company were to remain at home. I cannot say what they were to do here. I cannot remember if the officers had uniforms on. This drilling took place in the fall of 1861; they left a few months before the fleet arrived here to drill in the planters' press. Sometimes two would be present. It was too dark to tell what kind of dress was worn by the officers. I went there to save my-

78 self from going in the army; I mean the Confederate army. I soon would have had an invitation to join the Confederate army. I never saw Confederate soldiers there while I was there. I have seen many go there with Confederate uniforms on. I cannot say if they had knapsacks with them. I believe they were going to join the Confederate army, but I believe they never joined. I saw 20 or 30, more or less. I know not if there were officers with them. They staid there some nights. Some of them cooked there, others bought outside what they wanted. I heard they returned home, but I don't know where they went. I never knew any other soldiers to be there. I do not know if Mr. Lynch was a State officer or not.

(Signed) TERENCE COYLE.

Sworn to and subscribed before me this 27th day of December, 1864.

(Signed) CH'S CLAIBORNE,

U. S. Com'n'r.

MARTIN BUTZ, for libellants, sworn, deposes:

I reside at the corner of St. James and St. Thomas. I have been

79 residing there for the last six years. I know the Tyler press. They tried to get me in there to drill before the fleet came up in the winter of 1862. Capt'n Nicholson, Lieutenant Lynch, and the other officers intended to court-martial me because I would not drill. The above-named officers were in the Confederate service. They intended to name the company the Nicholson Guards. They drilled for 3 or 4 months. The citizens were forced there. They drilled without arms. The intention was to raise a company for the Confederate service. So the officers stated to me. I never saw soldiers in the press besides the company.

(Signed) MARTIN BUTZ.

Sworn to and subscribed before me this 27th day of December, 1864.
[SEAL.] (Signed) CH'S CLAIBORNE,
U. S. Comm'r.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

UNITED STATES
vs.
THE COTTON-PRESS IN SQUARE TCHOUPITOULAS street, &c. } No. 3389.

80 Testimony taken before Charles Claiborne, United States commissioner, December 28, 1864.

B. L. LYNCH, for libellants, sworn, deposes and says:

I reside in the city of New Orleans, and have been residing here for about seven years. The Tyler press was used in 1862 for drilling militia. Louisiana State militia occupied it for about two months. I was first lieutenant in the company. The company was that of Capt'n Nicholson. We had no definite orders, nor definite knowledge of any particular duty, or assignment to any particular service. We were a militia company, ordered out under Gov. Moore's order, and a law passed the rebel legislature reorganizing the State militia. The militia was intended to defend the State—for State service. They were forced soldiers; our company was composed of men who were called out contrary to their will, and the generality of them, from my knowledge of them, were men who did not intend to fight against the national forces unless under compulsion.
81 We were never quartered there; we only met there two or three times a week to drill, and remained there for an hour or an hour and a half at drill-time. They were brought there under compulsion, and through dread of physical force, which I know was resorted to in some cases. The rebel authorities intended to use these forces against the troops of the United States at some future day, and I presume were drilling them for that purpose. They never bore arms, however, and had never acquired proficiency in military knowledge so as to be used as soldiers up to the occupation of the city by the naval and land forces of the United States.
(Signed) B. L. LYNCH.

Sworn to and subscribed before me this 28th day of December, 1864.
(Signed) CH'S CLAIBORNE,
U. S. Comm'r.

UNITED STATES
vs.
THE COTTON-PRESS IN SQ. TCHOUPITOULAS ST., &c. } No. 3389.

82 Testimony taken before Charles Claiborne, U. S. commissioner, December 29th, 1864, at 12 o'clock m.

Present, district attorney, Mr. Castera.

JAMES DAY, for libellants, being duly sworn, deposes and says:

I reside at No. 70 St. Thomas street, and have lived there for thirteen

years. I know the Tyler press, situated in the square bounded by Tchoupitoulas, Richard, New Levee, and Market street. I never have seen any confederate soldiers in that press.

(Signed) JAMES DAY.

Sworn to and subscribed before me this 29th day of December, 1864.

(Signed) CH'S CLAIBORNE,
U. S. Comm'r.

RICHARD PARSONS, for libellants, sworn, deposes and says:

I reside at No. 44 Religious street, between Orange and Race street. I know the Tyler press. I do not recollect seeing soldiers in that press in 1861 and 1862, neither do I remember to have seen a guard at
83 the gate at that time.

(Signed) RICHARD PARSONS.

Sworn to and subscribed before me this 29th day of December, 1864.

(Signed) CH'S CLAIBORNE,
U. S. Comm'r.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

Circuit court. Present, district att'y. 11 o'clock a. m., 31st December, 1864.

UNITED STATES
vs.
THE COTTON-PRESS IN SQUARE TCHOUPITOULAS street, &c. } No. 3389.

Testimony taken before Charles Claiborne, U. S. comm'r.

FREDERICK HECKER, for libellants, duly sworn, deposes and says:

I reside at the corner of Orange and Religious streets. I resided there in 1861 and 1862. I have been living in the city since 1849. I know the Tyler press, situated in the square bounded by Tchoupitoulas, Richard, New Levee, and Market street' *streets*. I saw Confederate sol-
84 diers in the press in 1861. They came from Texas. This was in the summer of 1861. They were there in the fall of 1861. They staid there at nights. They cooked and ate there. I saw them there standing in line. They were not equipped. I had many knives and pistols.

(Signed) FRED. HECKER.

Sworn to and subscribed before me this 31st day of December, 1864.

(Signed) CH'S CLAIBORNE,
U. S. Comm'r.

JOHN WIESSE, for libellants, sworn, deposes and says:

I reside at the corner of Girard and Tchoupitoulas. I have been a resident of this city for thirty-two years. I know the Tyler press, situ-

ated in the square bounded by Tchoupitoulas, Richard, New Levee, and Market streets. I saw Confederate soldiers living in the press a short time before the arrival of the Federal fleet—less than a month before. It was a place of rendezvous for Confederate soldiers.

(Signed) J. WIESSE.

85 Sworn to and subscribed before me this 31st day of December, 1864.

(Signed) CH'S CLAIBORNE,
U. S. Comm'r.

GEORGE DANN, for libellants, duly sworn, deposes and says:

I reside at the corner of Market and St. Thomas streets. I was living there in 1861 and 1862. I have been living there for 15 years. I know the Tyler press, situated in the square bounded by Tchoupitoulas, Richard, New Levee, and Market streets. I saw Confederate soldiers in the press in October, 1861. They were sent off by companies, and others came. They drilled there. They staid there at nights. They cooked and ate there. The press was occupied by Confederate soldiers until the very day the Federal fleet arrived.

(Signed) GEORGE DANN.

Sworn to and subscribed before me this 31st day of December, 1864.

(Signed) CH'S CLAIBORNE,
U. S. Comm'r.

86 *Depositions of 4 witnesses for libellants.—Filed January 4th, 1865.*

UNITED STATES
vs.
COTTON-PRESS IN SQUARE TCHOUPITOULAS, Richard, New Levee, & Market streets. } No. 3389.

Present, dist. att'y.

Testimony taken before Charles Claiborne, U. S. commissioner, at 12½ o'clock p. m., on the 4th day of January, 1865.

THOMAS BARLOW, a witness for libellants, duly sworn, deposes and says:

I reside at the corner of Adele and Tchoupitoulas. I have been residing in this city since the year 1847. I know the Tyler press, situated in the square bounded by Tchoupitoulas, Richard, New Levee, and Market streets. I was sick for nine months in the years 1861 and 1862, and saw no soldiers, to my knowledge, in said press.

(Signed) THOMAS S. BARLOW.

Sworn to and subscribed before me this 4th day of January, 1865.

87 (Signed) CH'S CLAIBORNE,
U. S. Comm'r.

JAMES REED, a witness for libellants, duly sworn, deposes and says:

I have been a resident of the city for more than 16 years. I know the Tyler press. I never saw soldiers in the Tyler press in 1861 and 1862.

(Signed) JAMES REED.

Sworn to and subscribed before me this 4th day of January, 1865.
(Signed) CH'S CLAIBORNE,
U. S. Comm'r.

JAMES CARRELY, a witness for libellants, duly sworn, deposes and says:
I know the Tyler press. I did not see soldiers in the press in 1861, nor in 1862.
(Signed) JAMES CARRELY.
Sworn to and subscribed before me this 4th day of January, 1865.
(Signed) CH'S CLAIBORNE,
U. S. Comm'r.

88 EDWARD TUITE, a witness for libellants, duly sworn, deposes and says:
I did not see soldiers in the Tyler press in the years 1861 and 1862. There were soldiers in all the presses, but I cannot say positively that I saw soldiers in the Tyler press.
(Signed). EDW'D TUITE.
Sworn to and subscribed before me this 4th day of January, 1865.
[SEAL.] (Signed) CH'S CLAIBORNE,
U. S. Comm'r.

Pro confesso.—Extract from the minutes, November term, 1865.

NEW ORLEANS, *Thursday, Nov'r 30th*, 1882.
Court met pursuant to adjournment.

UNITED STATES
vs.
THE COTTON-PRESS IN SQUARE TCHOUPITOULAS st., &c. } No. 3389.

The delay allowed by law having expired, and no claim or defense having been filed, after due monition and proclamation, it is, on motion
89 of the district att'y, ordered that all persons interested in the property seized except those that have intervened herein be pronounced in contumacy and default, and the libel adjudged and taken pro confesso.

Judgment of condemnation.—Extract from minutes of November 30th, 1865.

UNITED STATES
vs.
THE COTTON-PRESS IN SQUARE TCHOUPITOULAS street, &c. } No. 3389.

The monition issued in this cause having been heretofore returned, the usual proclamation having been made and the default of all persons duly entered, it is thereupon, on motion of the district attorney, ordered, adjudged, and decreed by the court now here, and his honor the judge, by virtue of the power and authority in him vested, doth hereby order, ad-

judge, and decree, that the cotton-press, with all the improvements and the ground upon which it stands, situated in the square bounded by Tchoupitoulas, Richard, New Levee, and Market streets, and
90 occupying the whole of said square, more or less, more fully described in the libel of information on file, be and the same are hereby condemned as forfeited to the United States. It is further ordered that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on the 18th day of January, 1866, and that upon the return thereof the proceeds be distributed according to law, the legal rights of the intervenors being reserved in the premises.

Venditioni exponas.—Issued December 6th, 1865.

United States circuit court, sixth circuit and eastern district of Louisiana.

The President of the United States of America to the marshal of the eastern district of Louisiana or either of his deputies, greeting:

Whereas at a circuit court of the United States holden at New
91 Orleans, for and within the said district, on the 30th of November, 1865, the following-described property, to wit: the building formerly used as a cotton-press or yard for storing cotton, situate in the square bounded by Tchoupitoulas, Richard, New Levee, & Market streets, and occupying the whole of said square, more or less, together with the ground on which the said press or yard stands, that is to say, a piece or portion of ground of an irregular form, situate in the faubourg Lacourse, of this city, being the square designated by the No. four on the general plan of said faubourg, deposited in the office of Louis T. Caire, notary, in this city, which square is composed of ten lots, numbered from one to ten inclusive, as per said plan, measuring, as per said plan, together, French measure, 120 feet front on New Levee street (formerly public road), 360 feet front on Richard street, 300 feet front on Tchoupitoulas street (formerly Old Levee), 180 feet front on Market street, thence 180 feet deep, up to the place of beginning, on New Levee street, to-
92 gether with all the buildings and improvements thereon and appurtenances thereof, known as the Brana press, now called the Tyler press, and all the rights, ways, servitudes, &c., have been decreed condemned as forfeited to the United States and ordered to be sold at public auction in due course of law and after due appraisement thereof:

These are therefore to command you to sell to the highest bidder, at public auction, at Merchants and Auctioneers' Exchange, No. 18 Royal street, within said district, on the 13th day of January, 1866, at 12 o'clock m., the said property as above described, and that the same be sold in accordance with the decree of this honorable court of date 30th November, 1865, a duly certified copy of which decree is hereto annexed for reference and made part of this writ, first giving thirty days' notice at least of the time and place of sale by advertising the same in the New Orleans Picayune and Southern Star, two of the newspapers printed in New Orleans, and by proclamation in the usual form on the day of sale, the
93 money arising from the sale to be paid into the registry of the said court, to be disposed of as the law in this case directs.

And make due return hereof with your doings herein on or before the 18th day of January, 1866.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at New Orleans, this sixth day of December, A. D. 1865, and the 90th year of the Independence of the United States of America.

[SEAL.] (Signed) F. B. VINOT,
D'y Clk.

Pursuant to the above precept I have caused the property described within to be sold at public auction and to the highest bidder, at the place on the day and at the hour herein directed, having given full thirty days' previous notice of the time and place and manner as well as the terms of said sale in the Picayune and the Southern Star, two of the newspapers printed in the city of New Orleans, as well as by the crier on the
94 day of sale, and having made due proclamation and duly cried the within described property, the same was sold to B. L. Millaudon for $53,500 *dollars* in cash, whereby the gross sale amounts to fifty-three thousand five hundred dollars, which I pay over to C. Claiborne, esq., the clerk aforesaid, to be disposed of as the court directs.

Attest:

(Signed) A. BAUDOIN,
Dep. U. S. Marshal.

Received from Cuthbert Bullitt, U. S. marshal, fifty-three thousand five hundred dollars ($53,500), being, as he saith, the gross proceeds of the foregoing sale, the monies to be disposed of as the court directs, and for which I have signed duplicate receipts.

New Orleans, January 19th, 1866.

(Signed) F. B. VINOT,
D'y Clk.

Certificate of recorder of mortgages annexed to foregoing return.

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certifies that in the records
95 of this office there are no other mortgages standing in the name of Christopher Neal Pasteur, Richard Mason Pasteur, or in the name of Pasteur Brother, and recorded against the property described in the printed slip hereunto annexed, than the following, to wit:

(B. 73, p. 615.) The one they granted in favor of their vendor, Laurent Millaudon, per act before E. G. Gottschalk, notary, on the first, and recorded second July, 1859, to secure one hundred and twelve thousand three hundred and sixty-two $\frac{50}{100}$ dollars interest and costs.

(B. P. 1, p. 370.) The privilege for drainage.

But I further certify that said property when purchased was subject to the following mortgage, to wit:

(B. 68, p. 235.) The one granted by said Laurent Millaudon in favor of L. F. Generes, per act before Selim Magner, notary, on the 12th, and

recorded 16th June, 1856, to secure fifty thousand dollars ($50,000) now reduced by payment $35,000.

New Orleans, January 13th, 1866.

(Signed) CHAS. E. LENES,
D'y Rec'd'r.

96 *Deed to B. L. Millaudon.—Extract from deed book No. 2.*

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans:

UNITED STATES
vs.
THE COTTON-PRESS, SQUARE TCHOUPITOULAS, Richard, New Levee, and Market streets. } No. 3389.

Whereas I, Cuthbert Bullitt, marshal of the United States for the eastern district of Louisiana, under and by virtue of a writ of venditioni exponas to me directed by the honorable the circuit court of the United States for the district aforesaid, in the suit entitled The United States vs. The Cotton-press, &c., in square Tchoupitoulas, Richard, New Levee, and Market streets No. 3389 of the docket of said court, did expose at public sale according to law, and after all the previous legal requisites had been fulfilled and complied with, and after having given full thirty days' notice in the New Orleans Picayune and the Southern Star, two of the daily newspapers printed and published in the city of New Orleans,
97 viz, on the 7th and 19th December, 1865, 2d and 13th January, 1866, the following-described property, viz: the building formerly used as a cotton press or yard for storing cotton, situated in the square bounded by Tchoupitoulas, New Levee, Richard, and Market streets, and occupying the whole of said square, more or less, together with the grounds on which the said press or yard stands; that is to say, a certain piece or portion of ground, of an irregular shape, situated in the faubourg Lacourse, in the city, being the square designated by the number four, on the general plan of said faubourg, deposited in the office of Louis T. Caire, late notary in this city, which said square is composed of ten lots of ground, numbered from one to ten, inclusive, as per plan, measuring together in French measure one hundred and twenty feet front on New Levee street (formerly Public Road); three hundred and sixty feet front on Richard st., 300 ft. front on Tchoupitoulas street, formerly Old Levee; 160 feet front on Market street; thence 180 feet front on Market Place, and then 180 ft. deep, up to the place of beginning, on New Levee street, together
98 with all the buildings and improvements thereon and appurtenances thereof, known as the Brama press, but now called the Tyler press, and the rights, ways, servitudes, privileges, and hereditaments to the same belonging, or in any wise appertaining, and all the right, title, and interest in and to the above-described property:

On Saturday, the thirteenth day of January, 1866, in the year of our Lord one thousand eight hundred and sixty-six, at the hour of 12 o'clock m., at the Auctioneers and Merchants' Exchange, No. 18 Royal street, in this city, where, after making due proclamation of said sale and duly crying the said cotton-press and appurtenances, the same were adjudicated to

Benjamin L. Millaudon, he being the last and highest bidder thereon, for the price and sum of fifty-three thousand and five hundred dollars in cash at the time of adjudication, which said sum I hereby acknowledge to have received in current money of the United States of America.

And it appears from a duly certified copy from the record in the office of the recorder of mortgages for the parish of Orleans, which certifi-
99 cate is annexed to the writ of venditioni exponas, under the authority of which the above-described property has been sold, that there are none other than the following mortgages recorded against the above described property, viz:

(B. 73, p. 615.) The one granted by Christopher Neal Pasteur and Richard Mason Pasteur (Pasteur Bros.) in favor of their vendor, Laurent Millaudon, per act before E. G. Gottschalk, notary, on the 1st, and recorded the 2d July, 1859, to secure $112,362.50, interest and costs.

(P. 1, p. 370.) The privilege for draining.

The record further certifies that said property when purchased was subject to the following mortgage, viz: (B. 78, p. 235.) The one granted by said Laurent Millauden in favor of L. F. Generes, per act before Selim Magner, notary, on the 12th, and recorded 16th June, 1856, to secure $50,000, interest and costs, and now reduced by payment of $35,000.

Now, therefore, know all men by these presents that I, the U. S. marshal aforesaid, in consideration of the premises, and by virtue of
100 the laws in such case made and provided, and under the authority of the acts of Congress of 6th August, 1861, the 17th July, 1862, and the 3d March, 1863, in relation to confiscation, do hereby sell, transfer, assign, and set over unto the said Benjamin L. Millaudon as aforesaid, his heirs, administrators, executors, and assigns, all and singular the above-described property, with all the buildings and improvements thereon, rights, ways, privileges, hereditaments, and appurtenances to the same belonging or in any wise appertaining.

To have and to hold the above-described property, with all the buildings and improvements thereon, rights, ways, &c., &c., as aforesaid, unto the said Benjamin L. Millaudon, his heirs and assigns as aforesaid, to his, and their proper use, benefit, and behoof forever.

In testimony whereof I grant these presents under my signature as U. S. marshal aforesaid, in the said city of New Orleans, on this 18th day of January, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States the ninetieth.

(Signed) CUTHBERT BULLITT,
101 *U. S. Marshal.*

Executed in presence of—
(Signed) A. BAUDOIN.
" J. J. PRIESS.

[$53. Int. rev. stamps affixed & cancelled.]

(Indorsed:) Deed of sale.

CLERK'S OFFICE.

A true copy of the original deed of sale.
New Orleans, January 18th, 1866.
(Signed) CHARLES CLAIBORNE, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Intervention of W. Jackson.—Filed January 11th, 1866.

U. S.
vs.
COTTON-PRESS, &c. } No. 3389.

Circuit court of the United States for the 6th circuit and eastern district of Louisiana.

The intervention of Washington Jackson, a subject of the Kingdom of Great Britain, respectfully shows:

That he is a creditor of C. N. Pasteur and R. M. Pasteur in the sum of $2,414.99, and interest at 8% per annum from 1st Jan., 1861,
102 till paid, said sum being the balance of 3 certain promissory notes hereto annexed and made part of this petition of intervention, on account of which petitioner has at divers times received payments, leaving now due $2,414.99 and int.

That the payment of said sum is secured by mortgage upon the property herein proceeded against for confiscation; and that said mortgage was granted on the 1st July, 1859, by act before Gottschalk, notary public, and that payment of said notes and the balance due thereon is by law to be made in preference over other claims and those of the U. S. herein.

Wherefore this intervenor prays leave to file this his intervention and that the same be allowed, and that out of the proceeds of the property herein proceeded against and condemned the said sum of $2,414.99 be paid, with interest as aforesaid and costs, by preference over the plaintiffs and all other creditors and claimants. And he prays for such other decree and order as may be lawful and proper in the premises, and as in duty bound will ever pray.

(Signed) HUNT & DENEGRE, *Att'ys.*

103 Let this petition of intervention be filed.
Jan'y 11, 1866.
(Signed) E. H. DURELL,
Judge.

(Act of sale referred to in the foregoing intervention is transcribed on page 14 of this transcript.)

Order fixing all interventions.—Extract from minutes of January 22d, 1866.

UNITED STATES
vs.
THE COTTON-PRESS, &c., IN SQUARE TCHOUPITOULAS STREET, &c. } No. 3389.

Ordered, that this cause be fixed for trial on the interventions for the 27th inst. at 11 a. m., and that all the intervenors be notified thereof.

Motion and order, discontinuance of intervention of Citizens' Bank.—Extract from the minutes of January 27th, 1866.

UNITED STATES
vs.
THE COTTON-PRESS, &C. } No. 3389.

104 On motion of Deblieux, esq., att'y for the Citizens' Bank of Louisiana, it is ordered that the intervention filed by said bank, be discontinued.

Amended intervention of L. Millaudon.—Filed by leave of court, Jan'y 29th, 1866.

U. S. circuit court.

UNITED STATES
vs.
THE COTTON-PRESS, &C., IN SQUARE TCHOUPITOULAS, &C. } No. 3389.

To the hon. the judges of the United States circuit court, sixth judicial circuit and eastern district of Louisiana:

Laurent Millaudon begs leave as intervenor in this case to file and amend his pleadings, and respectfully represents that in his original intervention he claimed to be the holder and owner of thirteen of the notes described in his said intervention, and that he being the endorser of the two others, and being liable for the payment thereof, he had an actual interest in it, and said intervenor having now paid said two notes he holds fifteen of
105 them which he hereto filed, and he is therefor entitled as vendor for the full payment of said fifteen notes, and in consequence his claim is to be admitted with the mortgage and vendor's privilege, with costs and for general relief.

(Signed) L. CASTERA,
Of Counsel.

Judgment, favor of intervenors.—Extract from the minutes of January 27th, 1866.

UNITED STATES
vs.
THE COTTON-PRESS, &C., TCHOUPITOULAS, Richard, New Levee, & Market sts.

This cause came up for trial on the interventions—district att'y for the United States, L. Castera, for L. Millaudon; Hunt & Denegre, for Washington Marks—when, after hearing the pleadings and evidence, and the counsel for L. Millaudon having amended his intervention under the leave of court, it is ordered, adjudged, and decreed that there be judgment in favor of said L. Millaudon for the sum of one hundred thousand one
106 hundred and thirteen dollars and eighty cents, being the aggregate amount in capital and interest due on the notes sued on, with a lien

and privilege on the proceeds of the property seized and sold in this case.

It is further adjudged and decreed that there be judgment in favor of Washington Jackson for the sum of two thousand four hundred and fourteen dollars ninety-nine cents, with interest at eight per cent. per annum thereon from first January, 1861, till paid, with a lien and privilege on the proceeds of the property aforesaid.

Intervention of W. T. Hepp. Filed Feb'ry 6th, 1866.

THE U. S.
vs.
THE TYLER COTTON-PRESS.

To the hon. the judges of the circuit court of the United States for the sixth circuit and eastern district of Louisiana:

The libel of intervention of William T. Hepp, of New Orleans, intervening for his *interrening for his* interest in and upon the Tyler
107 Cotton-press herein proceeded against for confiscation and now under seizure before this hon. court, respectfully shows:

That said Hepp is the holder of the two promissory notes hereto annexed, one for $10,900 and the other for $5,000, dated New Orleans, 1 July, 1859, and payable the former at one year from date and the other at two years from date, drawn by C. M. Pasteur and by R. M. Pasteur to the order of and endorsed by themselves; and that said notes are secured by mortgage specially granted by said drawers upon the property herein seized and proceeded against for confiscation.

That by the laws of Louisiana and of the United States your intervenor is entitled to be paid said notes, and the interest thereon from the dates at which the same were due and payable, at the rate of 8 % per annum until paid, by preference over the U. States, out of the property herein libelled, all of which more at large appears from the copy of the act of mortgage herein filed.

Wherefore this intervenor prays your honors that he be permit-
108 ted to file his libel of intervention, and that the same be allowed, and that he have judgment for the amount of said notes, with 8 % interest as aforesaid, with mortgage and right of preference upon said property herein libelled; and he prays for all general and equitable relief.

(Signed) WM. H. HUNT & DENEGRE,
Att'ys for Int.

Let this petition of intervention be filed.
Febr'y 6th, 1866.
(Signed) E. H. DUREL, *Judge.*

Order, discontinuance of Hepp's intervention.—Extract from the minutes of December 1st, 1866.

UNITED STATES
vs.
THE COTTON-PRESS, &C. } No. 3389.

On motion of Hunt and Denegre, of counsel for Wm. T. Hepp, inter-

venor in this cause, it is ordered that the intervention of said Hepp be discontinued.

109 *Acknowledgment of satisfaction of judgment in favor of W. Jackson.—Filed March 27th, 1867.*

NEW ORLEANS, *March* 4, 1867.

UNITED STATES
vs.
COTTON-PRESS, &C. } No. 3389 of the docket of the court.

Amount of judgment, two thousand five hundred dollars ($2,000) and interest.

I do hereby certify that this claim and intervention on behalf of Washington Jackson was entirely satisfied by the payment on the part of C. N. Pasteur, esq., or Pasteur Bros., of the sum of twenty five hundred dollars, recovered by Messrs. Hunt and Denegre, att'ys, and by them paid to me, less their fees for collection.

(Signed) HUNT & DENEGRE,
Att'ys of W. Jackson.

(Written across the face:) I concur with Messrs. Hunt & Denegre.
(Signed) A. R. MILTENBERGER,
P'r W. JACKSON.

Judgment of distribution.—Extract from the minutes of May 11th, 1867.

UNITED STATES
vs.
THE COTTON-PRESS, &C. } No. 3389.

110 The U.S. marshal having returned into court the writ of venditioni exponas, showing that the gross proceeds of the libelled property are $53,500.00, and it appearing of record that L. Millaudon has obtained a judgment for the sum of $100,113.80, with a privilege and mort gage on the proceeds of said property, that the judgment in favor of Washington Jackson and Company for $2,414.39, with interest, has been satisfied, and that the intervehtion of W. T. Hepp has been discontinued: Ordered, adjudged, and decreed that after deducting the costs heretofore taxed, amounting to $4,501.83, and the additional cost incurred since, viz, clerk, 11.20; U. S. marshal, 8.50—4,521.54, the balance of 48,978.46 be paid over to L. Millaudon, in part satisaction of his claim, he assuming all taxes that may be due on said property.

111 *Motion and order to pay B. L. Millaudon.—Entered and filed December 19th, 1872.*

UNITED STATES
vs.
THE COTTON-PRESS, &C. } No. 3389.

On motion of B. L. Millaudon, test'y ex'r of Laurent Millaudon, de-

ceased, suggesting that the sum of $848.16 had been deposited in the First National Bank of New Orleans to the credit of this case, and that a dividend of $35 % on all deposits has been declared and paid by C. Case, esq., receiver:

Ordered, that the registrar be authorized to pay the relator the sum of $296.85, equal to 35% on said deposit less costs.

MARY E. KIRK, WIDOW OF R. M. PASTEUR,
vs.
WILLIAM LYND AND ROBERT N. LEWIS. } No. 9459.

Subpœna in chancery.—Issued May 24, 1881.

UNITED STATES OF AMERICA:

The President of the United States to the marshal of the eastern district of Louisiana, greeting:

112 You are hereby commanded to summon William Lynd to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of July, 1881, then and there to answer a bill in chancery filed against him and Robert N. Lewis, wherein Mary Elizabeth Kirk, widow of Richard M. Pasteur, natural tutrix, &c., is complainant and said William Lynd and Robert N. Lewis are defendants.

Herein fail not, and have you then and there this writ with you' endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th May, 1881, and 105th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND,
Dy Clk.

113 The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of July, 1881, otherwise the bill may be taken pro confesso.

(Signed) T. V. COUPLAND,
Dy Clk.

Marshal's return.

Received May 24, 1881, by the U. S. marshal, and on May 25, 1881, I served a true copy of the within subpœna on chancery on William Lynd, def't herein, by handing the same to him in person in the city of New Orleans.

(Signed) E. T. CURRY,
Dy U. S. Marshal.

Subpœna in chancery.—Issued May 24, 1882.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Robert N. Lewis to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of July, 1881, then and there to answer a bill in chancery filed against
114 him and William Lynd, wherein Mary Elizabeth Kirk, widow of Richard M. Pasteur, natural tutrix, &c., is complainant, and said Robert N. Lewis and William Lynd are defendants.

Herein fail not, and have you then and there this writ with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24' day of May, 1881, and the 105th year of American Independence.

(Signed) T. V. COUPLAND,
D'y Cl'k.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before the first Monday of July, 1881, otherwise the bill may be taken pro confesso.

(Signed) T. V. COUPLAND,
D'y Clerk.

Marshal's return.

Received May 24, 1881, by the U. S. marshal, and on May 25th,
115 1881, I served a true copy of the within subpœna in chancery on Robert N. Lewis, def't herein, by handing the same to him in person, in the of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Ent'g appearance.—Extract from chancery order book July 1, 1881.

MARY E. KIRK, WIDOW, &C., *vs.* WILLIAM LYND & ROBERT N. LEWIS. } No. 9459.

William Lynd and Robert N. Lewis, defendants herein, by Bayne and Renshaw, their solicitors, have this day entered their appearance to the complainant's bill of complaint.

Demurrer.—Filed July 29th, 1881.

MARY E. KIRK, TUTRIX, &C., *vs.* R. N. LEWIS & WILLIAM LYND. } No. 9459.

The joint and several demurrer of Robert N. Lewis and William Lynd,

defendants, to the bill of complaint of Mary Elizabeth Kirk, in her
116 capacity of natural tutrix of Effie May Pasteur, Mary Kirk Pasteur, and Sallie Kate Pasteur:

These defendants by protestation, not confessing or acknowledging all or any of the matters in and by the bill set forth and complained of to be true in manner and form as the same are thereby and therein set forth and alleged, severally say that they are advised that there is no matter nor thing in the complainant's bill of complaint contained good and sufficient in law to call these defendants to account to this honorable court for the same, but that there are good causes of demurrer thereunto, and they do demur thereunto accordingly, and for causes of demurrer say that complainant's bill of complaint, in case the same were true, which these defendants in no wise admit, said bill shews that other parties who have been made complainants or defendants are interested and necessary parties, viz, Georgiana Pasteur, wife of William E. Kirk, Francis I. Pasteur and Alice Pasteur, who are set forth as heirs of Richard M. Pasteur, deceased, and as
117 coheirs with complainants, and both classes of said heirs claim the same property, that the cause cannot be heard and until said coheirs are made parties hereto.

And these defendants, jointly and severally, further demur to said bill, and for cause of demurrer say that upon the face of their bill of complaint, and the record made part thereof, it is shewn that said property was seized by the Government of the United States in virtue of the act of Congress of the United States approved 6th of August, 1861, "An act to confiscate the property used for insurrectionary purposes," in the suit No. 3589, United States vs. The Cotton-press, &c., in square bounded by Tchoupitoulas, Richard, New Levee, and Market streets, libelled, condemned, and sold, and proceeds applied to pay price of said property. And thes' defendants say that under said sale there was a full and complete divestiture of title from Richard M. Pasteur and his heirs, and not merely of his life estate, as claimed by complainants, and that a full and complete title to said property vested in the purchaser under the sale and proceed-
118 ings in said suit of the United States vs. The Cotton-press, &c., No. 3389, which were conformable to the laws and Constitution and the power and authority of the Government of the United States, and that complainants are not entitled to any relief nor discovery herein against the defendants.

Wherefore, and for divers other errors and defects in complainant's said bill of complaint contained and appearing upon the face thereof, these defendants do as aforesaid demur in law thereunto and crave the judgment of this honorable court whether they are compelled or ought to make any answer thereunto otherwise than as aforesaid.

And these defendants pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

(Signed) THOS. L. BAYNE,
Solicitor for Def'ts.

Subscribed and sworn to before me July 29, 1881.

(Signed) T. V. COPELAND,
Comm'r U. S. Circuit Court, Eastern Dist. of La.

Robert N. Lewis and William Lynd, being sworn, say that they

119 are the defendants herein; that they are advised and believe that the above is well founded in law, and that the same is not interposed for delay.

(Signed) ROBERT N. LEWIS.
(do.) WM. LYND.

I hereby certify that I am solicitor for the defendants, Robert N. Lewis and William Lynd, and that in my opinion the above demurrers are well founded in law.

(Signed) THOS. L. BAYNE.

Entry in chancery order book, July 29th, 1881.

MARY E. KIRK, WIDOW, &C., *vs.* WILLIAM LYND AND ROBERT N. LEWIS. } No. 9459.

William Lynd and Robert N. Lewis, defendants herein, by Thos. L. Bayne, their solicitor, have this day filed their demurrer to the complainant's bill of complaint.

Motion and order.—Demurrer fixed.—Extract from minutes, November term, 1881.

NEW ORLEANS, *Monday, 7th*, 1881.

Present, Hon. E. C. Billings, district judge.

120 MARY E. KIRK, WIDOW, &C., *vs.* WM. LYND & ROBERT N. LEWIS. } No. 9459.

On motion of William Reed Mills and R. Stewart Dennee, solicitors for plaintiff, it is ordered that the demurrer herein filed be set for trial on Saturday, the 19th day of November, 1881, at 11 o'clock a. m., and defendants' solicitor be notified.

Hearing and submission.—Extract from minutes of November 19th, 1881.

MARY E. KIRK, WIDOW, &C., *vs.* WM. LYND & ANOTHER. } No. 9459.

This cause came on to be heard on the demurrer of the defendants to the bill of complaint herein.

J. A. Campbell & Thos. L. Bayne for defendants.

R. S. Dennee & Wm. R. Mills for comp'l't.

And the same was argued by the said counsel and submitted; and thereupon the court took time to consider.

121 *Decree.—Entered and filed Dec'r 3d*, 1881.

MARY E. KIRK, NATURAL TUTRIX, &c., *vs.* WILLIAM LYND AND ROBERT N. LEWIS. } No. 9459.

This cause came on to be heard on the joint and several demurrer of William Lynd and Robert N. Lewis, and was argued by counsel.

On consideration whereof, and the court being advised in the premises, is of opinion that the said demurrer is well taken, and should prevail.

It is therefore ordered, adjudged, and decreed that the said demurrer be sustained and the complainant's bill of complaint be, and the same is hereby, dismissed, at her costs to be taxed.

December 3d, 1881.

(Signed) EDWARD C. BILLINGS, *Judge.*

122 *Opinion of the court.*

[From Federal Reporter, No. 9, folio 645]

There have been several grounds urged in support of demurrer. I shall consider but one. Did the respondents purchase the fee of the property, or only a life estate? The bill and record of this confiscation proceedings, which are made part thereof, show a sale by the United States marshal, and a purchase by the defendants of the property herein demanded under the act of August, 1861. The act provided for the seizure and confiscation of property used or intended to be used to aid in a rebellion then a war. It made no discrimination between the property of citizens and that of aliens. It excited no scruples as to its constitutionality in the mind of the President. It was qualified and restricted by no joint resolutions; in fact it added nothing to the undoubted right of war which the government before pronounced to seize and dispose of all prop-
123 erty used in aid of its enemies. Its sole effect was to declare the purpose of Congress to enforce a belligerent right.

The Supreme Court says this emphatically in Miller vs. The U. S., 11 Wall., p. 308, and they reaffirm the same doctrine in Osborne vs. The U. S., 91 U. S., p. 477.

All the cases in which the Supreme Court have limited the estate which passed at a confiscation sale to a life estate have been prosecuted under the act of July 17th, 1862. In all these cases the restriction has been put in consequence of the joint resolution. (See Bigelow vs. Forrest and Day vs. Micou and Benjamin.) But the joint resolution was, in its terms, confined to the act of 1862. The effect of this confiscation, which, in its terms, included the fee, is to be determined by the character of the act of 1861.

This, the Supreme Court say, was an exercise of the war power, and not of municipal sovereignty.

This is consistent with the rulings of the Supreme Court in the Armstrong Foundry, 6 Wall., 769.

That case holds that a pardon, properly pleaded, ended proceedings under the act of 1861.

124 That case does not decide the question presented here.

The power given by the Constitution to the President to pardon

is without qualification, and a complete pardon remits all forfeiture, except where the rights of third persons have intervened. This is equally true whether the forfeiture arises under a merely municipal law or the law of nations, and does not conflict with the doctrine, as above established, that a forfeiture arising jure belli is to be measured by that grant of power to Congress to declare war and make peace, or with the other doctrine that the act of Congress under which this forfeiture was made was the exercise of a bel'igerent right on the part of the Government of the United States.

Let the demurrer be sustained.

Petition for rehearing.—Filed January 26th, 1882.

MARY E. KIRK, WIDOW, &C.,
vs.
ROBERT N. LEWIS & WILLIAM LYND. } No. 9459.

125 To the hon. the said circuit court:

The petition of Mary E. Kirk, natural tutrix, complainant in above entitled and numbered cause, respectfully submits that there is error in the judgment of this court, hereinbefore in this cause rendered, sustaining the demurrer of defendants and dismissing complainant's bill in this:

That said ruling and the grounds of opinion therefor are contrary to the opinion rendered by the Supreme Court of the United States, at its present term, in the case of Peter Jones and George L. De Cotles, tenants, and William L. Whitlock, owner, plaintiffs in error, against John Buckell and Mary E. Buckell, defendants in error, and No. 186 of the docket of said court, wherein it is decided:

That under the act of August 6th, 1861, entitled "An act to confiscate the property used for insurrectionary purposes," the libel, condemnation, and sale of property conveyed to the purchaser only an estate for
126 life, as contended in complainants' bill, and not an estate in fee, as contended in defendants' demurrer and held by this honorable court as ground for sustaining said demurrer.

Wherefore complainant prays that a rehearing in the premises be granted.

(Signed) R. STEWART DENNEE,
Do. WM. REED MILLS, *Solicitors.*

Petition to file additional grounds for rehearing.—Filed February 18th, 1881.

MARY E. KIRK, WIDOW, &C.,
vs.
WM. LYND & AL. } No. 9459.

The petition of complainant respectfully asks to file additional grounds for a rehearing in this cause, which are set forth in the accompanying printed brief.

(Signed) R. STEWART DENNEE.
Do. WM. REED MILLS.

Submission of petition for a rehearing.—Extract from the minutes, February 18th, 1882.

127

MARY E. KIRK, WIDOW, &C., *vs.* WM. LYND AND R. N. LEWIS. } No. 9459.

This cause came on to be heard on the petition herein filed by the complainant for a rehearing.

R. Stewart Dennee and Wm. R. Mills for petitioner.

Thomas L. Bayne for defendants.

And thereupon the solicitor for the complainant submitted the matter on briefs, and upon the additional grounds for a rehearing set forth in printed brief.

Document offered by complainant and made part of petition for a rehearing, February 18th, 1882.

U. S. circuit court, northern district of Florida.

JOHN BUCKELL ET AL. *vs.* PETER JONES ET AL. }

Instructions and charges of court to the jury.

The court instructs the jury:

(1.) That the act of Congress passed August 6th, 1861, is constitutional and in full and binding force.

128 (2.) That a confiscation of property under said act of Congress, and in pursuance of its provisions, is good and valid, and can only be reviewed by a writ of error or appeal, provided the court does not exceed its jurisdiction and, for instance, sell a fee-simple when it can only sell a life estate.

(3.) That a sale of realty under and in pursuance of the act of Congress passed August 6th, 1861, carried with it all the title of the owner without any reservation of interest whatever to him or to any one else, subject of course to all existing liens at the time of seizure of the property.

(4.) That the act of Congress of August 6th, 1861, was an exercise of belligerent rights, and entirely within the scope and authority of Congress.

(5.) That the acts of 1861 and 1862, are different. The act of 1861, enforcing confiscation of property itself, had been used or employed for Confederate purposes.

The act of 1862 enforcing confiscation for the reason that the individual was the offender, and his property seized for two reasons:

129 First, that the enemy should not have the benefit of it; second, as a punishment of the offender.

But both acts make knowledge and consent of the owner a necessary ingredients to confiscation. This much is said in response to the prayer for special instructions in behalf of the defendants.

The learned counsel, by an agreement filed in the case, have relieved us of much trouble.

This case is presented: Charles Willey, the owner of the lot in question, consented to its being used in aid of the rebellion. It was confiscated and sold and a deed made to the purchaser, which purported to pass the fee-simple. Charles Willey died in 1875, and his heirs now come forward and claim the property described in the declaration.

Purchasers at judicial sales can only take such title and interest as it was in the power and jurisdiction of the court decreeing the sale to give.

The acts of 1861 and 1862, through differing in some respects,
130 are in pari materia; while the one treats of property the other of the person, both are on account of the acts of the person offending.

The Armstrong Foundry case shows that you cannot proceed against the offending thing without complying with it the guilty knowledge and consent of the person, and that the pardon of the offender absolved the property as well as the person.

Upon review of the whole case the court charges you that the condemnation and sale of the lot in question purporting to convey a fee-simple only conveyed an estate for the life of Charles Willey, and that the heirs of the said Charles Willey are entitled to recover the same.

I, Philip Walter, clerk of the United States circuit and district courts for the 5th judicial circuit and northern district of Florida, do hereby certify that the foregoing is a true, correct, and complete copy of its original as appears of record in my office.

In witness whereof I have hereunto set my hand and seal of the
131 city of Jacksonville, Florida, this 8th day of February, A. D. 1882, and of our Independence the 106th year.

[SEAL.] (Signed) PHILIP WALTER, *Clerk.*

Order, new trial refused.—Extract from the minutes of March 14, 1882.

MARY E. KIRK
vs.
WM. LYND ET AL. } No. 9459.

This cause came on to be heard upon the petition for a rehearing filed by the complainant; was argued by counsel. On consideration whereof the court adheres to the opinion heretofore delivered by it. It is therefore ordered that a rehearing be refused.

Motion and order for appeal.—Extract from the minutes of April 19th, 1882.

MARY E. KIRK, WIDOW, &C.,
vs.
WM. LYND AND R. N. LEWIS. } No. 9459.

132 On motion of R. Stewart Dennee and Wm. Reed Mills, solicitors for the plaintiff, Mary E. Kirk, widow R. M. Pasteur, and natural tutrix of the minors Effie, May, Mary Kirk, and Sallie Katie, issue of her marriage with said R. M. Pasteur, and representing to the court that she feels aggrieved by the final decree rendered in the above entitled case against her on the 3d December, 1881, and that she desires to appeal from the same:

It is therefore ordered that said plaintiff be and is hereby allowed an appeal from said final decree, returnable at the next term of the Supreme Court on the first day of said term, upon plaintiff furnishing her bond, with good security conditioned according to law, in the sum of two hundred and fifty dollars.

And it is further ordered that this motion and order be entered of record in this cause.

Bond for appeal.—Filed May 19th, 1882.

UNITED STATES OF AMERICA:

133 Know all men by these presents that we, Mary E. Kirk, widow of Richard M. Pasteur, natural tutrix, etc., and George C. Norcross, of the city of New Orleans, parish of Orleans, *parish of Orleans*, State of Louisiana, are held and firmly bound jointly and severally unto William Lynd and Robert N. Lewis in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Wm. Lynd and Robert N. Lewis, their heirs, executors, administrators and assigns, for which payment well and truly to be made we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated the 19th day of May, in the year of our Lord 1882.

Whereas the said Mary E. Kirk, widow and natural tutrix as aforesaid, having heretofore, to wit, on the 19th day of April, 1882, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the third day of December, 1882, by the circuit
134 court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of Mary E. Kirk, widow of Richard M. Pasteur, natural tutrix of Effie May Pasteur, Mary Kirk Pasteur, and Sallie Katie Pasteur, duly recognized and qualified, vs. William Lynd and Robert N. Lewis:

Now, the condition of the above obligation is, that if the above bounden Mary E. Kirk, widow and natural tutrix as aforesaid, shall prosecute her said appeal to effect, and shall answer all damages and costs if she shall fail to make good *his* complaint, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) MARY E. KIRK, *Widow, etc.*, [L. S.]
(Signed) Per R. STEWART DENNEE, *Solicitor.*
(Signed) GEORGE C. NORCROSS. [L. S.]

Bond approved May 19th, 1882.
(Signed) EDWARD C. BILLINGS, *Judge.*

UNITED STATES OF AMERICA,
135 *District of Louisiana, ss:*

Personally appeared George C. Norcross, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, State of Louisiana, and is worth the full sum of two hundred and fifty dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) GEORGE C. NORCROSS.

Subscribed and sworn before me this 19th day of May, 1882.
(Signed) J. DEVONSHIRE,
Comm'r U. S. Circuit Court, Eastern District of Louisiana.

136 THE UNITED STATES OF AMERICA:

Circuit court of the United States, eastern district of Louisiana.

The President of the United States to William Lynd and Robert N. Lewis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a motion and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Mary E. Kirk, widow of R. M. Pasteur, natural tutrix, is complainant and appellant, and you and each of you are defendants and appellees, to show cause, if any there be, why the decree rendered against the said Mary E. Kirk, widow, &c., and natural tutrix, as in said motion and order for an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 20th day of May, in the year of our Lord one thousand eight hundred and eighty-two.

EDWARD C. BILLINGS, *Judge.*

137 (Indorsed:) R. William Lynd, Robert N. Lewis. R. United States circuit court. No. 9459. Mary E. Kirk, widow of R. M. Pasteur, nat'l tutrix, vs. William Lynd and Robert N. Lewis. Citation.

Marshal's return.

Received Jun' 15, 1882, by the U. S. marshal, and on August 9, 1882, I served copies of the within citation on Wm. Lynd and Robert N. Lewis, esq'r's, by handing the same to them in person in this city.

August 9, 1882.

JOS. DEVONSHIRE,
D'y Marshal.

138 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 135 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Mary E. Kirk, widow of Richard M. Pasteur, natural tutrix, &c., vs. William Lynd & Robert , No. 9459 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 26th day of Sept'r, A. D. 1882.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 26th day of September, A. D. 1882.

EDWARD C. BILLINGS, *Judge.*

(Indorsement on cover:) No. 1054. Mary E. Kirk, widow of R. M. Pasteur, natural tutrix, &c., appellant, vs. William Lynd and Robert N. Lewis. E. Louisiana C. C. U. S. Filed 12th October, 1882.

OFFICE SUPREME COURT U. S.
FILED
OCT 14 1882
JAMES H. McKENNEY, Clerk.

SUPREME COURT UNITED STATES.

No. —.

MARY E. KIRK, Widow of Richard M. Pasteur, Natural Tutrix, Appellant,

vs.

R. N. LEWIS and WM. LYND.

Appeal from the Circuit Court of the Eastern District of Louisiana.

Brief of Appellant.

WILLIAM REED MILLS,
R. STEWART DENNEE,

Supreme Court of the United States

No. ——.

MARY KIRK, Widow of Richard M. Pasteur, Natural Tutrix,

vs.

R. N. LEWIS and WM. LYND.

On Demurrer, that by the Act of Congress approved August 6th, 1861, entitled "An Act to confiscate property used for insurrectionary purposes," the fee of real property, and not simply a life estate, was confiscated.

Brief of Plaintiff and Appellant.

The pleadings consist of a bill of complaint, in character similar to the bill in case of Wallach vs. Van Riswick (2 Otto 208) and a demurrer, resting on two grounds.

The bill, substantially, charges:

That Richard M. Pasteur, on July 1, 1859, jointly with C. N. Pasteur, purchased a property then known as the Bramer Cotton Press, situate in the city of New Orleans;

That, in accordance with the act, entitled "An Act to confiscate property used for insurrectionary purposes," approved August 6, 1861, the said property was seized, libelled, and, on the 5th December, 1865, was condemned and forfeited by a decree on said date rendered by the Honorable the United States Circuit Court for the then District of Louisiana, wherein said proceedings were instituted;

That subsequently, to-wit: the 13th January, 1866, the said property, in virtue of a writ of *venditioni exponas*, issued under said decree, was adjudicated at public vendue by the Marshal to Laurent Millaudon; under which adjudication, through several mesne conveyances, the said defendants are in possession of said property;

That said Richard M. Pasteur deceased on the 3d May, 1874, and that complainant, his widow, has been duly qualified as natural tutrix of the children, issue of her marriage with said R. M. Pasteur;

That said minor wards, and their certain co-heirs of age, were, at the time of his death, the sole children and heirs of said R. M. Pasteur.

Duly certified copies of letters of tutorship, and notarial act of the said sale of July 1, are annexed to and made parts of said bill; and, as proof of the several averments of the seizure, libel, decree of condemnation, reference is made to the record of said confiscation suit, being No. 3,389, of said Circuit Court, and which record, including pleadings and testimony, has been, at the in-

stance of the solicitors of defendants, copied as part of transcript in this case.

The bill, on the case thus stated, claims that said children and heirs of R. M. Pasteur, at his death, on the 3d May, 1874, became the owner of one undivided half of said forfeited and condemned property; that, at said date the said defendants, in their own right, ceased to have further title to the possession of said undivided half; and until delivery of the same to said heirs of R. M. Pasteur, held the same, bound to surrender possession thereof and to account to them for all fruits and revenues arising therefrom.

The demurrer filed to the bill sets forth, substantially, as grounds of demurrer:

1. That by the act of August 6, 1861, and the proceedings thereunder, the fee of said R. M. Pasteur, and not simply his life estate in said forfeited property, was condemned; and that, consequently, by said proceedings, including the seizure, libel, decree of condemnation and adjudication, the said fee was conveyed to the purchaser; and the heirs of said R. M. Pasteur, notwithstanding the averments of facts set forth in the bill, have no title. A fee remains vested in defendant.

2. The other ground of demurrer, not pressed or ruled upon in the Circuit Court, is that the co-heirs of plaintiffs are necessary parties to this action, and, therefore, further proceedings should be staid until they are made parties.

Reference to these heirs is drawn in the bill, and provision for such appearance is made in the bill,

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. * * * The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted."†

The power to defend the government against every hostile attack is fully delegated to Congress by the former of the above articles.

Nor is this power limited to hostilities waged against the United States by an alien enemy. In this regard it is immaterial whether the hostile power be a foreign nation or citizens of the United States.

Between these two hostile forces, however, this distinction, and one common to the codes of all nations, is recognized: that when war is waged by citizens, in combined insurrection, however numerous and powerful they may be, and though the contest may embrace many of the attributes of ordinary war between independent nations, the insurgents, and aliens joining them, are, each as an individual, subject to a relation and responsibility, involving treason and punishment.

So fully is this distinction recognized between these two hostile classes, that those who compose or are connected with their respective armies, are known technically, by different appellations; the one being known simply as enemies, the other as rebels; and the contest with the former is designated a foreign war, with the latter, a domestic insurrection; and the soldiers of the

†Art. 3, Sec. 3.

former are considered as in discharge of a loyal duty: the participators in the latter, their aiders and abettors —until, at least, the insurrection ends in successful revolution—as guilty of a grave civil and political offense.

Therefore, while the rules affecting these different classes of belligerents may have much in common, and while the humane and wise policy of modern times may have modified in both a former severity, yet there still remains a difference (especially in case of failure of the insurrection) compelling a consideration by the judiciary, when required to determine the consequences of the war and the legislation incident thereto, upon the rights of the subjects and citizens of the respective belligerents.

Among the various existing differences recognized in these rules and especially affected by modern usage, none is more marked than that concerning the confiscation of enemy's property. Indeed, so thoroughly have the cause and consequence of this difference been examined and defined by statesmen and jurists, including this court, that only the error committed as is conceived, in regard thereto, on which rests the demurrer sustained by the judge at circuit in the case at bar, would warrant the extended reference herein made to authority, as well determining the extent and limit of the power of, as interpreting the statutes passed by Congress, during the late civil war, to confiscate the private property of those engaged in the rebellion.

Since the discussion and decisions as to the source and extent of the right of confiscating enemy's property during wars between independent nations, had in in the cases heard and decided by this court immediately after the war of 1812, there has been no difference of opinion, in this country, at least, as to the rules, under the law of nations, governing the confiscation of the private property of public enemies. Respecting the abstract unlimited power of such confiscation, no doubt was ever entertained. "The war gives to the sovereign full right to take the person and confiscate the property of the enemy wherever found."* While, however, this is true, yet in the case cited, says Chief Justice Marshall, as organ of the majority of the court:

"The mitigation of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself. That remains undiminished, and when the sovereign authority shall choose to bring it into operation, the judicial department must give effect to its will. But until that will shall be expressed, no power of condemnation can exist in the court."

Even earlier than this was recognized the binding effect of the humane modifications of the rigid rules of the law of nations.

Said Mr. Justice Wilson: "When the United States declared their independence they were bound to receive the law of nations in its modern state of purity and refinement."*

In the application of these modern rules to the confiscation of debts, the learned Justice said:

*Brown vs. U. S., Cranch, 122.

"By every nation, whatever its form of government, the confiscation of debts has long been considered disreputable; and we know that not a single confiscation of that kind stained the code of any of the European powers who were engaged in the war which our revolution produced."

As to private property, the Chief Justice, in the same case, said:

"Between debts contracted under faith of laws, and property acquired in course of trade, on the faith of the same laws, reason draws no distinction; and although, in practice, vessels, with their cargoes, found in port at the declaration of war, may have been seized, it is not believed that modern usage would sanction the seizure of the goods of an enemy on land, which were acquired in peace in the course of trade."

A similar rule has been extended to landed property. Recognizing the duty of government to respect private titles to land granted to subjects by their sovereign, previous to an amicable cession of territory, the same Chief Justice, in a later case, advanced as a reason:

"It may not be unworthy of remark that it is very unusual, even in cases of conquest, for the conquerer to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged if private property should be generally confiscated and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relation to each other, and their rights of property, remain undisturbed."*

*U. S. vs. Percheman, 7 Peters, 86.

With the full warrant of high judicial authority. Mr. Wheaton states:

"It is a principle of public law that private property on land is exempt from confiscation, with the exception of such as may become booty in special cases when taken from the enemy in the field or in beseiged towns, and of military contributions levied upon the inhabitants of the hostile territory," and which "exemption extends even to the case of an absolute and unqualified conquest of the enemy's country."†

No more implicit obedience to these no less humane than wise usages has been given by any nation than by our own.

An examination of the several statutes which the war of 1812 gave rise to, satisfied this court that Congress had in no manner indicated an intention to confiscate the property of British subjects found within the United States at the declaration of war.‡

In the only other instance of a public war waged by our government—the Mexican—the most absolute respect for the private rights of the citizens of the enemy was enjoined, and the inhabitants of the portion of the conquered country retained as a result of the war, were secured by treaty stipulation in their rights of property and local institutions.

As regards *domestic* enemies, while there has been modification in the rules governing the confiscation of enemy's property in civil wars, yet it is not as marked as in wars between separate nationalities. And this arises from several easily understood causes.

†Laws of Nations, Lawrence Ed., p. 596.
‡Brown vs. U. S., 8 cranch 129

In the first place, the treatment of a domestic enemy, both as to his person and property, is, strictly, a matter concerning only the government and its rebellious citizens; and, consequently, except when, from cruelties, instincts of humanity warrant it, can never become subject of international right and inquiry.

The more direct cause of this difference, however, is, that the act of the citizen in becoming an enemy of his own government, includes a *personal* relation, which, *so far as he is concerned*, deprives him of those claims which have mitigated the harsh treatment of strictly public enemies. The act of a public enemy is but a discharge of his loyal duty. Toward him, laws, human and divine, naturally tend with considerate feeling; but by him who insisted that the law's severity should be confined, by language unmistakable, *to the persons embraced within it*, was it said: "To give government protection to the property of persons who have abandoned it and gone on a crusade to overthrow the same government is absurd, if considered in the mere light of justice;" though in consonance with his ever considerate action in the midst of severest trials, he added, "the severest justice may not always be the best policy."*

Thus it was that the various States under the Confederation, and during the Revolution, passed acts of confiscation, which, although from their nature, would, as between independent nations, have been deemed odious, and not in accord with the laws of nations, were

*Projet of President's veto message to act of July 17, 1862; in appendix to brief.

yet by the courts of the several States and of the United States held valid, *because not in conflict with any direct provision of the State constitution.*

Thus an act was passed by the Legislature of Georgia, on 4th May, 1782, "inflicting penalties on, and confiscating the estate of such persons therein mentioned." Among others, the act confiscated the property of Basile Cooper. He, as alleged in the act, having been a citizen of Georgia, had adhered to the troops of His Brittanic Majesty at open war with Georgia and the United States; had taken up arms with the said troops, and had never returned to the United States.

To its enforcement against him Cooper alleged that he was never tried, convicted or attainted of the crime of treason, and that the act was in derogation of the right of trial by jury and other rights guaranteed to the citizen by the constitution of Georgia in force at the passage of the act.*

By the Chief Justice, at circuit, and by the other Justices, on appeal, it was, however, held that the question as to the validity of the act of confiscation was to be determined *exclusively* by the fact whether it violated any of the provisions of the constitution of Georgia. This, an unanimous court determined it did not do, and therefore held the forfeiture of Cooper's estate by the act valid.

*Cooper vs. Telfair, 4 Dallas, 14.

Said Mr. Justice Washington:

"The constitution of Georgia does not expressly interdict the passing of an act of attainder and confiscation by the legislature. Is such an act, then, so repugnant to any constitutional regulation as to be excepted from the legislative jurisdiction by a necessary implication?"

As this did not appear, he concludes, "there is no ground on which I could be prepared to say that the law is void."

Acknowledging the *constitutional control* over the right of confiscation, as of other powers, Mr. Justice Chase said:

"There is likewise a material difference between the laws passed by the individual States and laws passed subsequent to the organization of the Federal constitution. Few of the revolutionary acts would stand the vigorous test now applied."†

Equally emphatic was the language, as to the only restriction of the power being that imposed by the organic law, of Mr. Justice Paterson:

"I consider it a sound political proposition, that wherever the legislative power of a government is undefined, it includes the judicial and executive attributes. Had the legislature power to punish its citizens who had joined the enemy, and could not be punished by the ordinary course of law? It is denied, because it would be an exercise of judicial authority. But the power of confiscation and punishment does not belong to the judicial authority whose authority could not reach the offender; and yet it is a power that grows out of the very nature of the social compact, which must reside somewhere, and which is so inherent in the legislature that it cannot be divested or

†Ibid.

transferred without an express provision of the constitution." *

It was upon like grounds that the courts of the different States sustained the validity of these confiscation acts.

The acts passed by the legislature of Massachusetts, in 1777–8, "to prevent the return to the State of certain persons therein named and others;" and "to prevent waste," &c., the Supreme Court of that State held valid, because not in violation of any constitutional prohibition existing at the date of the acts.†

Of the act passed by the legislature of New Hampshire, in 1778, "confiscating all the estate of Wm. Stark," "on account of his being a refugee; he having, in 1776, while a citizen of New Hampshire, fled to the British troops," the Supreme Court of that State said:§

"It is by us considered a valid act. It was passed before any of our constitutions, and was specially exempted from the operation of our new one. * * * Similar acts passed in other States during the great conflict for independence have uniformly been held valid."

That these confiscation acts, thus passed by the several States, dealt with the acts of the owners as "an offense, and inflicted forfeiture as a penalty," as held by this court regarding the act of August 6, 1861,† is evidenced by the views expressed by this court regarding the several acts passed by the legislature of

*Ibid. †McNeill vs. Bright, 4 Mass R.
§Atherton vs. Johnson, 2 N. H. Rep. 34.
†Armstrong's Foundry, 6 Wallace, 769.

New Jersey in 1776–7–8, providing that every person abiding within the State owed allegiance to it, and was a member of it;* offering a pardon to "such subjects of the State as had been seduced from their allegiance to it, and had joined the enemy;" and prescribing that in case they did not return by the 1st of August, 1777, their *personal* estate should be forfeited, and if perishable, or likely to fall into the hands of the enemy, it should be sold;"† and by a subsequent act, that both the real and personal estate of those "offending who had neglected to avail themselves of tendered pardon, were to be taken into possession —the personal to be sold, and the real to be rented out."

Of these acts, say the court, by Mr. Justice Cushing:

"The act of 5th June, 1777, contains an express declaration that such persons were subjects of the State who had been seduced by the enemy from their allegiance. The law speaks of them as fugitives, not as aliens, and they are invited, not to become subjects, but to return to their duty, which the Legislature already considered as still subsisting and obligatory upon them.

"The inquiry which the jury is directed to make, by the act of April, 1778, in order to lay a foundation for the confiscation of the personal estate of these fugitives, is whether the person had between the 4th October, 1776, and 5th June, 1777, joined the armies of the King of Great Britain, or otherwise *offended* against the form of his allegiance to the State. * *

"During all this time the real estate of these persons remained vested in them, and when by the law of the

* Act 4th Oct., 1776. † Act 5th June, 1777.

11th December, 1778, the legislature thought proper to act upon this part of their property, it was declared forfeited for their offenses, not escheats."

The distinction in the source of the rules distinguishing the confiscation of the property of alien from that of domestic enemies, is further illustrated in the opinion of this court upon the act of the legislature of Virginia of October 20, 1777, entitled "An Act concerning escheats and forfeitures from *British subjects*." Said the court:†

"There are two points involved in the discussion of this power of confiscation; the first arising from the rule prescribed *by the law of nations*, and the second arising from the construction *of the treaty of peace*."

Uncontrolled by the law of nations, and with slight restrictions by their organic laws, it is not surprising that, during their struggle for independence, the legislatures of the States should have exercised the power of confiscating the property of those whom they considered disloyal to their cause, in a manner not only harsh, but producing evils instead of benefits.

Such was the case. No less true than severe were the charges of injustice and oppression made against the several acts of confiscation—an injustice recognized by the courts compelled to enforce them.

Therefore it was that, while there appeared no means of remedying the evil already wrought, the framers of the Constitution determined that, in all possible future civil wars, they and their descendants should be pro-

†Ware vs. Hylton, 3 Dallas 199.

tected from the excesses known and felt to be incident to the exercise of this unrestricted power.

As a common ground of complaint against these acts had been that the guilt on which the forfeiture was predicated was declared without trial or legal process, when, even, as stated by Mr. Justice Story, "the punishment had often been inflicted without calling upon the party accused to answer, or without even the formality of proof; and, sometimes, *because the law*, in its ordinary course of proceedings, *would acquit* the offender," Congress, by the new constitution, was prohibited from passing bills of attainder.

Further, to guard against an evil which had principally accompanied bills of attainder, Congress was prohibited from passing *ex post facto* laws.

With the same object, like prohibitions were imposed by the constitution upon the several States; for so great were the dangers lurking in this power of confiscation, if held unrestricted, by either Congress or State legislatures, it was felt that, in the language of Story: *

"The same policy and principles apply to each. It would have been utterly useless, if not absurd, to deny a power to the Union which might at the same time be applied by the State to purposes equally mischievous and tyrannical, and which might, when applied by the States, be for the very purpose of subverting the Union."

Equally forcible were the arguments on the wisdom

* Com. § 1367.

of these proposed restrictions on legislative power addressed to the people by Madison‡ and Hamilton.§

Another evil arose from this unrestricted exercise of power of confiscation. It was the right to declare the corruption of blood and forfeiture of the real estate beyond the life of the treasonable offender.

Mr. Justice Story thus states the reason which led to the adoption of the third section of the third article of the Constitution:

"Two motives, probably, concurred in introducing it as an express power. One was, not to leave it open to implication, whether treason was to be exclusively punishable with death, according to the known rule of the common law, and with the barbarous accompaniments pointed out by it; but to confide the punishment to the discretion of Congress. The other was, to impose some limitation upon the nature and extent of the punishment, so that it should not work corruption of blood or forfeiture, beyond the life of the offender."

After narrating the reasons commonly assigned for the forfeiture of the land and tenements beyond the life estate of the person attainted of treason, the learned jurist says:

"But this view of the subject is wholly unsatisfactory. It looks only to the offender himself, and is regardless of his innocent posterity. It really operates as a posthumous punishment upon them, and compels them to bear, not only the disgrace naturally attendant upon such flagitious crimes, but takes from them the common rights and privileges enjoyed by all other citizens, where they are wholly innocent, and however remote they may be in the lineage from the first offend-

§ Opinion of Hamilton cited by counsel in 4 Wallace, 290.
‡ Federalist, No. XLIV.

er. It surely is enough for society to take the life of the offender as a just punishment of his crime, without taking from his offspring and relations that property which may be the only means of saving them from poverty and ruin. It is bad policy, too, for it cuts off all the attachment which these unfortunate victims might otherwise feel for their own government, and prepares them to engage in any other service by which their supposed injuries may be redressed, or their hereditary hate gratified. Upon these and similar grounds it may be presumed that the clause was first introduced into the original draft of the constitution, and after some amendments, it was adopted without any apparent resistance."†

And it is worthy of note, especially when after near a century has elapsed, the dangerous unlimited exercise of this is claimed for Congress, that the first act of Congress defining crimes, including treason, and inflicting penalties, contained the condition: "Provided, always, and be it further enacted, that no conviction or judgment for any of the offenses aforesaid, shall work corruption of blood or *any* forfeiture of estate."*

In proof of the wisdom of this legislative restriction, additional to that of the Constitution, Mr. Justice Story adds:

"The history of other countries abundantly proves that one of the incentives to prosecute offenses as treason has been the chance of sharing in the plunder of the victims. Rapacity has been thus stimulated to exert itself in the services of the most corrupt tyranny; and tyranny has been furnished with new opportunities of indulging its malignity and revenge; of gratify-

† Com. §1290, 1292.
* Acts 1790, chap. 36, sec. 24.

ing its envy of the rich and good, and of increasing its means to reward favorites, and to secure retainers for the worst deeds."

For over fifty years, this forfeiture, in England, by statute, has been restricted to the life of the offender.*

And, when, in 1861, treason had passed the power of the judicial department to suppress its hostile combination against the government, the question of the confiscation of the property of the insurgents arising. Congress knew that there existed a difference in the rules governing the confiscation of enemy's property in a civil, and those controlling in a foreign war; that our government had always insisted upon other nations obeying, and itself had ever given cheerful obedience to the humane modification in the laws of nations, embracing an entire renunciation of the right "to confiscate private property on land, with the exception of such as may become booty in special cases, when taken from the enemy in the field or in besieged towns, and of military contributions levied upon the inhabitants of the hostile territory; "that the right to confiscate the private property of domestic enemies was not controlled by the law of nations, and had been exercised by the States during their confederation, as it always had been in the mother country, without restriction or limitation; that in the exercise of this power during the revolutionary struggle, statutes had been passed working acknowledged evils, but which when their enforcement was resisted, as violative of all principles of justice and

* 3 and 4, William IV. c. 106.

right, were invariably adjudged valid because of the non-existence of any constitutional prohibition on the State legislatures to enact them. And Congress also knew—and there is no reason to doubt that they acted under an appreciation of such knowledge—the motive, reason and object actuating the people, who had experienced these evils, to place their *imprimatur* upon the provisions devised by their statesmen, whereby the power to confiscate the private property of domestic enemies should be retained by their Congress, but shorn of its dangerous elements.

Subject to these restrictions, the right of Congress, during the civil war, to confiscate every kind of property of the insurgents, was considered undoubted. Thus the property subject to confiscation by the act of August 6, 1861, was held to embrace "all description of property, real or personal, on land or on water."* The act of July 17, 1862, in the cases mentioned in its fifth and sixth sections provides for the seizure and forfeiture "of all the estate and property, money, stocks, credits, and effects" of the persons therein mentioned.

As in the confiscation acts passed during the revolutionary struggle, so in these latter statutes some treasonable act of the owner constituted the ground of forfeiture. "Using or suffering property of any kind to be used or employed, in aiding, abetting or promoting such insurrection;" " those hereafter acting

*Union Insurance Co. vs. United States, 6 Wallace, 763.

as an officer of the army or navy of the rebels, &c;" or "being engaged in armed rebellion, or aiding, or abetting the same," or "not returning to their allegiance to the United States," are the offences declared by the respective acts to be the causes of forfeiture.

The only material difference in the two acts in this regard, is, that the act of 1861 is not as sweeping in its nature as that of 1862. In truth, the sixth section of the act of 1862, by confiscating "all the estate" for the offence of not ceasing "in any manner to aid, countenance, and abet the rebellion," embraces the offence of "using, or consenting to the use of property in aid of the insurrection," and the penalty therefor—"the forfeiture of the property so used or permitted to be used," provided by the act of 1861.* So essentially, was the ground of forfeiture an offence of the owner, that when it was insisted that the act of Aug. 6, 1861, does not affect property with liability to condemnation as a punishment for an offence of the owner, this Court, through Chief Justice Chase, replied:

"We are unable to consent to this view. We think it clear that the statute regarded the consent of the owner to the employment of his property in aid of the rebellion as an offence and inflicting forfeiture as a penalty.‡

For the same reason, it was held, at the same time, that an undivided portion of the property which had been used for insurrectionary purposes, was not subject

* 12 Stat. at Large, 319. 589.
‡ Armstrong's Foundry 6 Wallace, 769.

to forfeiture, because owned by minors;* and it was in the same spirit, that Congress by a subsequent act of March 7, 1863, secured "to any loyal citizen of the United States, or of any foreign state or power at peace and amity with the United States," *bona fide* claims which, in the proceedings of confiscation, might be filed against the property; *provided* that such claimant had not "knowingly participated in the illegal use of such property."†

It was because of this distinctive feature of responsibility for individual action that our government held, though in conflict with public feeling, that an American citizen "for so long as he continues within the dominions of a foreign government, owes obedience to that government, and may be punished for treason, or other crimes as a native born subject might be, unless his case was varied by some treaty stipulation;" and this court held that resident aliens "were amenable to the laws of the United States prescribing punishment for treason and for giving aid and comfort to the rebellion" and recognized their right to executive clemency.

Nor is either Congress or a state, in derogation of these prohibitions, allowed "to accomplish indirectly what cannot be done directly."

For a statute, indirectly, as well as directly, violative of these constitutional provisions, "being capable, in its own nature, of being brought to the test of the

* Union Ins. Co. vs. United States, Ibid. 762.
† Statutes at Large, Vol. 12, Chap. xc.

constitution, is subject to judicial revision," and this court becomes "the final arbiter" as to its validity. So, in adjudicating the unconstitutionality of the test oath, known as the "oath of loyalty," required by the revised constitution of Missouri, of 1865, to be taken by all persons before they should be capable of voting, or of holding office of trust, or the position of manager of any corporation, or of acting as a professor or trustee, or of holding any property in trust for use of any church, within the State, &c., this court said :

"The question is not as to the existence of the power of the State over matters of internal policy, but whether that power has been made in the present case an instrument for the infliction of punishment *against the inhibition of the constitution.*" *

And in adjudging unconstitutional the supplementary act of Congress of 24th January, 1865, requiring a similar oath of attorneys before admission or further appearance in any of the Federal courts, this court said:

"The legislature may undoubtedly prescribe qualifications for the office, to which he must conform, as it may, where it has exclusive jurisdiction, prescribe qualifications for the pursuit of any of the ordinary avocations of life. The question, in this case, is not as to the power of Congress to prescribe qualifications, but whether *that* power has been exercised as a means for the infliction of punishment against the prohibition of the constitution. That this result cannot be effected indirectly by a statute under the form of creating qualifications, we have held in the case of *Cummings vs. the*

* Cummings vs. State of Missouri, 4 Wallace, 319.

State of Missouri, and the reasoning by which that conclusion was reached applies to similar action on the part of Congress." *

In Fletcher vs. Peck, the Chief Justice, as organ of the court, referring to the act by which the estate of Fletcher had been forfeited, said:

"It forfeits the estate of Fletcher for a crime not committed by himself, but by those from whom he purchased. This cannot be effected in the form of an *ex post facto* law, or bill of attainder; why then is it allowable in the form of a law annulling the original grant?" †

In commenting upon this opinion, in the case of Cummings vs. State of Missouri, Mr. Justice Field said:

"The rescinding act, annulling the title of the parties, did not, in terms, define any crime, or inflict any punishment, or direct any judicial proceedings, yet, inasmuch as the legislature was forbidden from passing any law by which a man's estate could be seized for a crime, which was not declared such by some previous law rendering him liable to that punishment, that the rescinding act had the effect of an *ex post facto* law and was within the constitutional prohibition."

The appositeness of the language of Mr. Story regarding the pretence that it would be legal for a State to avoid indirectly the prohibition against emitting bills of credit, must be conceded as to every constitutional prohibition upon Congress or the States:

"The object of the prohibition was not to prohibit

* Ex parte Garland, ibid., 379.
† 2 Cranch, 336.

the thing, when it has a particular name; but to prohibit the thing, whatever form or name it might assume. * * * It cannot be seriously contended that the constitution means to prohibit names and not things; to deal with shadows, and leave substances."*

The same principle was thus applied by this court in Osborne vs. U. S., in determining the intendment of the act of July 17, 1862:§

"But were this otherwise, the *constitutional* grant to the President of the power to pardon offences must be held to carry with it, as an incident, the power to release *penalties and forfeitures* which arise from offences."

So, regarding the constitutional prohibition as to the duration of forfeiture of real estate, for an act of treason, whether that forfeiture be decreed through conviction after indictment, or by an action *in rem*, or civil action, the constitutional prohibition must be held to confine the forfeiture to the life of the person, whose offence was the sole ground of forfeiture.

That Congress, as well as President Lincoln, considered the several restrictions of the constitution to be binding upon them in all legislation, during and regarding the rebellion, is evident from the care therein taken. Thus, lest the third clause of the fifth section of the act of July, 17, 1862, might be considered as obnoxious to the prohibition against *ex post facto* laws, a joint resolution was introduced

*Commentaries, § 1358. §1 Otto, 478.

and passed, in the House of Representatives, that it "shall be so construed as not to apply to any acts done prior to its passage;" and to remove the understood anxiety of the Executive in another regard, by amendment introduced in the Senate, it was added: "nor shall any punishment or proceedings under said act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life."*

The grounds of the President's fears, as given in his *projet* of a veto message to the act, were:

"That to which I chiefly object pervades most parts of the act, but more distinctly appears in the first, second, seventh and eight sections. It is the sum of those provisions which result in the divesting of title forever for the causes of treason, and the ingredients of treason, but amounting to the full crime. It declares forfeiture extending beyonds the lives of the guilty parties, whereas the Constitution of United States declares that no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted. True, there is to be no formal attainder in this case; still, I think the greater punishment cannot be constitutionaly inflicted in a different form for the same offense. With great respect, I am constrained to say I think this feature of the act unconstitutional. It would not be difficult to modify. I may remark that the provisions of the Constitution put in language borrowed from Great Britain, applies only in this country, as I understand, to real or landed estate * * *

*Congressional Globe, 2d Sess., 37th Congress, pp. 3373-4. See Appendix

"For the reasons stated, I return the bill to the house in which it originated."

Such were the reasons of the great, illustrious man for refusing his constitutional sanction to an act which, though containing many unobjectionable features, was in some respects in conflict with a constitutional provision.

That the joint resolution was intended to have the same meaning as the constitutional prohibition, and that President Lincoln believed Congress had, under no circumstance, power, directly or indirectly, to authorize a forfeiture of the land of a domestic enemy beyond his life, as well as the reasons for the adoption of the prohibitory clause, are distinctly averred by Mr. Justice Strong, as organ of an unanimous court, in Wallack vs. Van Riswick :*

"The reasons that induced the passage of the resolution are well known. It was doubted by some, even in high places, whether Congress had power to enact that any forfeiture of the land of a rebel should extend or operate beyond his life. The doubt was founded on the provision of the constitution, in section 3, article III, that no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted. * * * The words of the resolution are not exactly those of the constitutional ordinance, but both have the same meaning, and both seek to limit the extent of forfeiture. In adopting the resolution, Congress manifestly had the constitutional ordinance in view, and there is no reason why one should receive a construction different to that given to the other.

* 2 Otto, 208.

"What was intended by the constitutional provision is free from doubt. In England, attainders of treason worked corruption of blood and perpetual forfeiture of the estate of the person attainted, to the disinherison of his heirs or those who would otherwise be his heirs. Thus innocent children were made to suffer because of the offense of their ancestor. When the Federal constitution was framed, this was felt to be a great hardship, and even rank injustice. For this reason it was ordained that no attainder of treason should work corruption of blood or forfeiture, except during the life of the attainted. No one ever doubted that it was a provision introduced for the benefit of the children and heirs alone; a declaration that the children should not bear the iniquity of their fathers. Its purpose has never been thought to be a benefit to the traitor, by leaving in him a vested interest in the subject of forfeiture.

The opinion rendered by the same justice, on behalf of the majority of the court, in Miller vs. United States,* does not question the previous opinion of Chief Justice Chase, on behalf of an unanimous court, that the statute of August 6, 1861, inflicted *forfeiture as a penalty*,‡ or imply any doubt that Congress, in its confiscation legislation, was subject to the constitutional prohibition against bills of attainder, *ex post facto* laws, or forfeiture beyond the life of the offending owner.

None of these issues were involved or considered in that case. The real question under considera-

* 11 Wallace, 292.
‡ Armstrong's Foundry, 6 Wallace, 765.

tion was the constitutionality of the act of July 17, 1862. As to the act of August 6, 1861, as stated by Mr. Justice Field, "no reliance had been placed upon it to support the forfeiture."

Moreover, as the property, the forfeiture of which was sought, was personal, not landed property, and the rights of the offending party himself were the subject of consideration, there could arise no question as to the 2d section of Art. III, and the forfeiture sought not being thought a bill of attainder, and the ground for confiscation being for acts committed subsequent to the last statute, there could arise no question as to the prohibition against bills of attainder and *ex post facto* laws.

That the legislation of Congress had been modeled upon that of the States during the Confederation, was directed against the property of domestic enemies, and, by the constitution, had been made subject to its prohibitions, is in this opinion of Mr. Justice Strong, clearly stated. In answer to the objection raised, that the acts of 1861 and 1862 were not confined in their operations to persons who are enemies within the law of nations, but were applicable to all persons participating in the rebellion, including alike citizens and aliens, though not residing within the revolted States, it was said:

"It is not without weight, that when the constitution was formed its framers had fresh in view what had been done during the Revolutionary war.

Similar statutes for the confiscation of property of domestic enemies, of those who adhered to Great Britain though not residents of Great Britain, were enacted in many of the States, and they have been judicially determined to have been justified by the laws of war. * * * It was with these facts fresh in memory, and with a full knowledge that such legislation had been common, almost universal, that the constitution was adopted. It did prohibit *ex post facto* laws. It did prohibit bills of attainder. But it imposed no restriction upon the power to prosecute war or confiscate enemy's property. * * The framers of the constitution guarded against excesses that had existed during the revolutionary struggle."

Hence, were expressions to be found in this opinion tending to sustain the interpretation of the act of August 6, 1861, as claimed by the present demurrer, it might be answered in the words of the learned justice who, when, from the language used in the case of Bigelow vs. Forrest, and Day vs. Micou, the inference was attempted to be drawn that, notwithstanding the confiscation, the fee remained in the owner, replied: "The language was perhaps incautiously used. * * The question was not before us. We were not called upon to decide anything respecting the quantity of the estate carved out."

The opinion of the majority of the court that, for a valid forfeiture a formal indictment of the offending person was unessential, was in strict accord with that of President Lincoln, whose recommendation simply was, that a judicial hearing should be secured to the owner. Speaking of the act of 1862, he said:

"Again, this act, by proceeding in *rem*, forfeits property for the ingredients of treason without conviction of the supposed criminal, or a personal hearing given him in any proceeding. That we may not touch property lying within our reach, because we cannot give personal notice to an owner who is absent endeavoring to destroy the government, is certainly not very satisfactory; still the owner may not be thus engaged, and I think a reasonable time should be provided for such parties to appear and have a judicial hearing. Similar provisions are not uncommon in connection with proceedings *in rem*."

The right to enforce forfeiture under acts for recovery of penalties for offences, independent of the indictment of the offender, has been often recognized.

Thus, in Adams, *qui tam* vs. Woods,* in an action of debt brought to recover a penalty imposed by the act entitled "an act to prohibit the carrying on of the slave trade," it was held that the act of April 30, 1790, limiting prosecutions upon penal statutes, extends as well to actions of debt for the recovery of penalties as to information and indictments. Through Chief Justice Marshall the court said:

"Almost every fine or forfeiture under a penal statute, may be recovered by an action of debt as well as by information; and to declare that the information was barred while the action of debt was left without limitation, would be to attribute a capriciousness on this subject to the legislature, which could not be accounted for."

The *gravamen* of the offence constituting the

*2 Cranch, 336.

ground of forfeiture is, by the statute, required to be as fully established as if after formal indictment.

The language of the prohibition is not that "no attainder of treason shall work corruption of blood or forfeiture," only when such attainder shall have been found on indictment, arrest of the person, trial and conviction. But, the prohibition is, that "*no* attainder shall work corruption of blood or forfeiture."

By what proceedings could an attainder of treason, in its legal interpretation, be more thoroughly and justly adjudged than by proceedings warranting the language of this court in McVeigh vs. United States?

"His" (McVeigh's) criminality lies at the foundation of the proceedings. It was averred in the libel that he was the owner of the property described, and that he was guilty of the offences charged, which rendered him liable to forfeiture. The questions of his guilt and ownership were, therefore, fundamental in the case.*"

Applicable to the act of Aug. 6, 1861, would be the language of the Chief Justice in the case of McIlvaine vs. Coxe, before cited, relative to the proceedings required by the acts of New Jersey, of June 5, 1777, and April 18, 1778.

"They were intended, not for the purpose of affecting them personally, which would have been most unjust, but with a view to the confiscation of

* 11 Wallace, 266.

their estate. And consonant with this distinction, the jury are to inquire in respect to their persons, not as in the case of those who have left the State after the 4th October, 1776, whether they have offended against the form of their allegiance, but whether they are offenders within the act, by having joined the enemy between the 19th of April, 1775 and the 4th of October, 1776 and not have returned and become subjects in allegiance to the State."

It may be said of the statutes, generally, passed by the several States, they were not directed to the life of the offender, but to the confiscation of his property.

It is submitted:

That the constitutional prohibition that "no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted," must, in accordance with an universal rule of interpretation, be considered as forming a part of every statute passed by Congress during the civil war, whereby any person was to be deprived, as for-

feited, of any estate or property, "for the causes of treason, and the ingredients of treason but amounting to the full crime;" and that the provisions and language of every such statute should be construed in accordance with the spirit and meaning of that prohibition as fully as if its words were formally made part of the act;

That, while "provisions, the sum of which would result in divesting of title forever," would render the act invalid for its repugnancy to the prohibition, such invalidity should not be declared except in accordance with the rule laid down by this court for the interpretation of these statutes:

"All general terms in statutes should be limited in their application, so as not to lead to injustice, oppression, or any unconstitutional operation, if that be *possible*. It will be presumed that exceptions were intended which would avoid results of that nature."*

It was only by a most liberal application of this rule that Congress, by its joint resolution, was enabled to construe the 5th section of the act of July 17, 1862, as not in conflict with the prohibition against the passage of *ex post facto* laws, and the several provisions of the whole act as not in conflict with the prohibition of the third section of the third article of the constitution.

The act of August 6, 1861, however, presents no such difficulties of construction. In it are to be

*16 Wallace, 153.

found no provisions or language which, separately or combined, would indicate that the forfeiture therein declared was not the forfeiture defined by the constitution.

That President Lincoln and the members of his cabinet so interpreted the language of the act, is evidenced by his official approval; for the truly patriotic motives and statesman-like reasons so firmly announced as the reasons of his hesitation in approving the subsequent act of July 17, 1862, preclude any other conclusion.

Another indication that the act was considered by the revisers of the public statutes, as likewise by a subsequent Congress, to fall within ordinary legislation, and therefore subject to every provision of the constitution in its peaceful integrity, is to be found in the fact that the whole act and twenty-three other sections selected from other acts, are combined under the title Insurrection.*

As if to remove any possible pretence for an assumption that the act of August 6, 1861, is not subject to constitutional prohibition, because the property liable to forfeiture is declared by the 1st section of the act "to be subject to prize and capture wherever found," the first two sections of the act (§§5308, 5309) are followed by the 7th section of Act July 2, 1864 (§5310), enacting:

"No property seized or taken upon any of the inland waters of the United States, shall be regarded

*Revised Statutes, Title lxi, §5308.

as maritime prize; but all property so seized or taken shall be promptly delivered to the proper officer of the courts."

A fortiori, property seized on land, real and personal, would be governed by the same rule; which, however, was but a legislative recognition of the distinction between municipal and maritime seizures, as stated in Brown vs. United States,* wherein the Chief Justice said:

"It cannot be necessary to employ argument in showing that where the attorney for the United States institutes proceedings at law for the confiscation of enemies' property found on land, or floating in one of our creeks, in care and custody of one of our citizens, he is not acting under authority of letters of marque and reprisal, still less under the authority of such letters issued to a private armed vessel."

And Mr. Justice Story dissenting on the main issues of the case, while holding that a seizure made in part while the property was water-borne, constituted a valid capture, yet said:

"Had it been landed and remained on land, it would have deserved consideration whether it could have been proceeded against as prize, under the admiralty jurisdiction, or whether if liable to seizure or condemnation in our courts, the remedy ought not to have been pursued applicable to municipal confiscations. On these points I give no opinion."

It is also submitted that whenever the question has been considered by jurists, the controlling effect of the prohibitory clause in Sec. 3, Art. 3 of the con-

*8 Cranch, 127.

stitution, has been recognized in its full integrity, and to the extent that, among the great things determined beyond further doubt by the war of rebellion, and which furnish the only consolation for its trials, is that the powers granted by the framers of the constitution to Congress, have been ample for all the exigencies of the nation, alike in war and in peace, and that the prohibitions on the various departments of the Government it formed were alike wisely ordained.

That Judge Cooley considered the joint resolution of July 17, 1862, to have been intended by Congress to set at rest the question "whether the fee in the real estate of the rebels might not be confiscated," rather than to simply add a restriction already engrafted on the act by the constitution itself, is evidenced by his note to §1300 of Story's Commentaries :

"But on the breaking out of the civil war in 1861, new acts were passed for the punishment of treason, and for the confiscation of the property of rebels. The punishment of treason may now, at the discretion of the court, be fine and imprisonment. Act July 17. 1862. A question having been raised whether the fee in the real estate of the rebels might not be confiscated, it was expressly provided in the confiscation acts that no punishment or proceeding should be construed to work a forfeiture of the real estate of the offender longer than his natural life."*

Says Mr. Justice Egan, as organ of the Supreme

* Story's Com., Cooley's Ed. 1873, §1300.

Court of Louisiana, in the case of Pendergast vs. Schawtz, 30 Ann. 590:

"The ownership of right acquired by the defendants under the confiscation sale, was and could be only imperfect, and was to terminate with the life of him against whose interests and property the proceedings in confiscation are directed. C. C. 490; Sec. 3, Art. 3 of the constitution of the United States; 7 Wallace, 339; 9 Wallace, 339, and joint resolution of Congress of same date with the confiscation act on the same subject. Had, however, Congress not interpreted their act by their joint resolution, as was held in the cases cited, the claim that *it possessed any war or other power superior to the constitution*, can receive no sanction from this tribunal, and, we trust, from no other American court at this day."

In the case of John and Mary Buckell vs. Peter Jones et al., instituted in the United States Circuit Court, for the Northern District of Florida, wherein the question upon which the court charged the jury was, whether a decree of forfeiture under the act of August 6, 1861, carried with it the fee or only an estate for the life of the owner. The opinion of the court, rendered in May, 1878, by Settle, District Judge, in his charge to the jury, will be found in *in extenso* in the transcript in the case at bar.

After referring to the statutes of 1861 and 1862, and the reasons for their passage, that learned Judge said:

"The learned counsel, by an agreement filed in the case, have relieved us of much trouble.

This case is presented:

Charles Willey, the owner of the lot in question, consented to its being used in aid of the rebellion.

It was confiscated and sold and a deed made to the purchaser, which purported to pass the fee simple.

Charles Willey died in 1875, and his heirs now come forward and claim the property described in the declaration. Purchasers at judicial sales can only take such title and interest as it was in the power and jurisdiction of the court decreeing the sale, to give.

The Acts of 1861 and 1862, though differing in some respects, are in *pari materia*. While the one treats of property, the other of the person, both are on account of the acts of the person offending.

The Armstrong's Foundry case shows that you cannot proceed against the offending thing without coupling with it the guilty knowledge and consent of the person, and that the pardon of the offender absolves the property as well as the person.

Upon review of the whole case, the court charges you that the condemnation and sale of the lot in question, purporting to convey a fee simple, only conveyed an estate for the life of Charles Willey, and that the heirs of the said Charles Willey are entitled to recover the same."

The distinguished counsel who argued in this court on behalf of the plaintiffs in error in the case of Jones et al. vs. Buckell, frankly admitted that his argument rested upon the proposition that during the civil war the Congress of the United States was not, in its legislation for the suppression of the rebellion, bound by "constitutional provision against attainders and forfeitures for treason,"* and the

*Brief of W. A. Beach, Esq., filed in case last cited, p. 10.

learned counsel for appellees here assert that "the whole matter is subject to the empire of force."

The experience of State legislation of the revolutionary period, and recognition of the dictates of justice and humanity, resulted in the adoption of the prohibitions here discussed. They were intended for all treason, and were not intended to sleep or be disregarded whenever their enforcement became possible or practical. It is surprising that it should be held seriously that they were meant to be considered as binding only when treason was not dangerous to the national existence. These prohibitions are a parto f the law of courts, and not to be set aside before legal tribunals on any plea of necessity, State or military. No such plea applies to the case at bar. Such doctrine, it is respectfully suggested, is repugnant to the ideas of the constitutional lawyer, the patriotic statesman and the lover of humanity. The constitution may have its defects, but these prohibitions form no part of them. Conceived in admirable wisdom and foresight, they are never inactive, but always powerful for good.

Respectfully submitted,

WILLIAM REED MILLS,

R. STEWART DENNEE,

FOR APPELLANT.

NOTE.—That no additional legal or equitable right is acquired by an adjudication of confiscated property by reason of the purchaser at the Marshal's sale being a mortgagee or even owner, as would seem to be intimated in brief of opposite counsel, has been too long adjudged to be now questioned. Wallach vs. Van Riswick, 2 Otto 203; French vs. Wade, 12 Otto 133; Pendergast vs. Schwartz, 30 La. An. 591.

It is true that the proceedings, including the evidence preceding the decree of forfeiture of 5th December, 1865, cannot now be impeached; however informal or severe in calmer times they may appear. No revision thereof was sought by the parties in interest within the time limited. But, considering that these proceedings, now presented at the instance of opposite counsel for examination of this Court, show that by answer of an intervenor, (who was enabled to comply with the prerequisite oath of loyalty, which at the time was rigidly exacted in the Circuit Court for the District of Louisiana,) it was "specially denied that said property was ever used in the manner and form charged in said libel, with the consent of the said owner thereof"; that by the evidence taken on this issue, on behalf of the government contradictorily with the opposing party, no such consent of the owner was shown to have been given; that, if the evidence so taken tended to show any use of the property for insurrectionary purposes, it was, at best, but a constructive treasonable use: that, after issue thus joined and evidence thereon taken and closed, the case was allowed to remain, ap-

parently at least, abandoned by the District Attorney for near a twelve month, when, without assignment of the cause or notice to contesting parties, and on the simple motion of the District Attorney, judgment *pro confesso* was entered against all parties in interest, excepting those who had opposed the forfeiture; which order was immediately followed by a final, complete decree of condemnation, and order for issuance of the writ of *venditioni exponas*: It may be safely stated that they exhibit another instance of hasty action incident to times of civil s rife, rather than a developing of equities against the application of the constitutional guarantee now invoked on behalf of complainant's wards. The proceedings seem to merit censure simila· to that imposed by this Court, when in its opinion the legal rights of an alleged offending party against the statute of July 17, 1862, had not been regarded. (11 Wallace 267.)

WILLIAM REED MILLS.
R. STEWART DENNEE.

APPENDIX.

MESSAGE OF PRESIDENT LINCOLN, July 17, 1862.

Fellow-Citizens of the Senate and House of Representatives:

Considering the bill to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes, and the joint resolution explanatory of said act as being substantially one, I have approved and signed both. Before I was informed of the passage of the resolution, I had prepared a draught stating my objections to the bill becoming a law, a copy of which draught is herewith transmitted.

JULY 17, 1862. ABRAHAM LINCOLN.

Fellow-Citizens of the House of Representatives:

I herewith return to your honorable body, in which it originated, the bill for an act entitled "An Act to suppress treason, to seize and confiscate the property of rebels, and for other purposes," together with my objections to its becoming a law. There is much in the bill to which I perceive no objections. It is wholly prospective, and it touches neither person nor property of any loyal citizen, in which it is just and proper.

The first and second sections provide for the conviction and punishment of persons who shall be guilty of treason, and persons who shall incite, set on foot, assist or engage in any rebellion or insurrection against the authority of the United States, or the laws thereof, or shall give aid or comfort to any such existing rebellion or insurrection. By a fair construction, the persons within these sections are not to be punished without regular trial in duly constituted courts, under the forms and all the substantial provisions of law and of the Constitution applicable to their several cases. To this I perceive no objection, especially as such persons would be within the general pardoning power, and also within the special provision for pardon and amnesty contained in this act.

It also provides that the slaves of persons confiscated under these sections shall be free. I think there is an unfortunate form of expression rather than a substantial objection to this.

It is startling to say that Congress can free a slave within a State, and yet, were it said that the ownership of the slave had first been transferred to the nation, and that Congress had then liberated him, the difficulty would vanish, and this is the real case. The traitor against the general government forfeits his slave as justly as he does any other property, and he forfeits both to the government against which he offends. The government, so far as there can be ownership, owns the forfeited slaves, and the question for Congress in regard to them is, shall they be made free or sold to new masters. I see no objection to Congress deciding in advance that they shall be free. To the high honor of Kentucky, as I am informed, she has been the owner of some slaves by escheat, and has sold none, but liberated all. I hope the same is true of some other States. Indeed, I do not believe it would be physically possible for the general government to return persons so circumstanced to actual slavery. I believe there would be physical resistance to it which would never be moved aside by argument or driven away by force. In this view of it I have no objection to this feature of the bill.

Another matter in these sections, and running through other parts of the act, will be noticed hereafter.

I perceive no objection to the third and fourth sections.

So far as I wish to notice the fifth and sixth sections, they may be considered together. That the enforcement of these sections would do injustice to the persons embraced within them, is clear. That those who make a causeless war should be compelled to pay the cost of it, is too obviously just to be called in question. To give government protection to the property of persons who have abandoned it and gone on a crusade to overthrow that same government, is absurd if considered in the mere light of justice. The severest justice may not always be the best policy. The principle of seizing and appropriating the property of the persons embraced within these sections is certainly not very objectionable, but justly discriminating application of it would be very difficult, and to a great extent impossible. Would it not be wise to place a power of remission somewhere so that these persons may know they have something to save by desisting? I am not sure whether such power or remission is or is not within section 13, without a special act of Congress. I think our military commanders, when, in military phrase, they are within the enemy's country, should, in an orderly manner, seize and keep whatever of real or personal property may be necessary or convenient for their commands. At the same time they should preserve, in some way, the evidence of what they do.

What I have said in regard to the slaves, while commenting

on the first and second sections, is applicable to the ninth, with the difference that there is no provision made in the whole act for determining whether a porticular individual slave does or does not fall within th› clauses defined in that section. He is to be free upon certain conditions, but whether those conditions do or do not pertain to him, no mode of ascertaining is provided. This could be easily supplied.

To the tenth section I make no objection. The oath therein required seems to be proper, and the remainder of the section is substantially identical with a law already existing.

The eleventh section simply assumes to confer discretionary powers upon the executive without the law, and I have no hesitation to go as far in the direction indicated as I may at any time deem expedient, and I am ready to say now I think it is proper for our military commanders to employ as laborers as many persons of African descent as can be used to advantage.

The twelfth and thirteenth sections are something better. They are unobjectionable, and the fourteenth is entirely proper, if all other parts of the act shall stand.

That to which I chiefly object pervades most part of the act, but more distinctly appears in the first, second, seventh and eighth sections. It is the sum of those provisions which result in the divesting of title forever for the causes of treason, and the ingredients of treason, but amounting to the full crime. It declares forfeiture extending beyond the lives of the guilty parties, whereas the constitution of the United States declares that no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

True, there is to be no formal attainder in this case; still, I think the greater punishment cannot be constitutionally inflicted in a different form for the same offence. With great respect, I am constrained to say I think this feature of the act unconstitutional. It would not be difficult to modify. I may remark that the provision of the constitution put in language borrowed from Great Britain applies only in this country, as I understand, to real or landed estate. Again, this act, by proceeding *in rem*, forfeits property for the ingredients of treason without conviction of the supposed criminal, or a personal hearing given him in any proceeding. That we may not touch property lying within our reach, because we cannot give personal notice to an owner who is absent endeavoring to destroy the government, is certainly not very satisfactory; still, the owner may not be thus engaged, and I think a reasonable time should be provided for such parties to appear and have a personal hearing. Similar provisions are not uncommon in connection with proceedings *in rem*.

For the reasons stated, I return the bill to the House in which it originated.

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IN THE

Supreme Court of the U. S.

MARY ELIZABETH KIRK, TUTRIX OF THREE MINOR CHILDREN OF HERSELF, AND RICHARD M. PASTEUR, DECEASED, APPELLANT,

vs.

WM. LYNDE AND ROBERT N. LEWIS, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES.—LOUISIANA.

JOHN A. CAMPBELL,
THOMAS L. BAYNE,
For Appellees.

JOHN MURPHY & CO., PRINTERS AND STATIONERS, BALTIMORE.

Supreme Court of the United States.

MARY ELIZABETH KIRK, Tutrix of Three Minor Children of Herself, and Richard M. Pasteur, Deceased, Appellant,

vs.

WM. LYNDE and ROBERT N. LEWIS, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES.—LOUISIANA.

STATEMENT OF FACTS.

I.

Richard M. Pasteur and Christopher N. Pasteur purchased in 1859, from L. Millaudon, a cotton press and warehouse situate in New Orleans, called Brama, or Tyler press, bounded by five streets of the city, and described in the deed of Millaudon, attached to the bill. These persons remained in possession of this property until the month of November, 1863, when it was seized for confiscation by the officers of the United States for having been employed in the Confederate service, in aid of the insurrection against the United States, contrary to the Act of Congress, passed the 6th of August, 1861. Proceedings were taken in the Circuit Court of the United States for the confiscation and condemnation of this property thus seized, and a decree was made in December, 1865, which was followed by a sale of the property in January,

1866, at which Millaudon, the vendor, became the purchaser, and obtained a deed as purchaser. It appears from the transcript that Millaudon had sold the property on a credit—that he had a mortgage; and that the vendees were in default; and that the property did not bring at the sale the amount of the debt—scarcely half of the debt. There was no opposition to the decree by the Pasteurs, nor was there any writ of error or appeal taken by them afterward. The first complaint heard from any one is to be found in this record. Richard M. Pasteur died in 1874, above eight years from the sale. He left six children alive. The mother of the three younger children brings this suit without joining the children of the first marriage. She claims an undivided fourth part of the property for them, and an account from the death of Pasteur, of fruits and revenues from the appellees, who acquired their interest from Millaudon.

PLEADINGS.

The pleadings consist of a bill upon the chancery side of the Court, and a demurrer by the appellees, who are the only defendants.

The deed from Millaudon to the two Pasteurs, dated in 1859, discloses their title. The descent of the children, the death of Richard M. Pasteur in 1874, the facts of seizure, confiscation and condemnation, are averred, and the record in the Circuit Court is an exhibit to the bill, and shows how the property returned to the possession of Millaudon. The bill charges that the defendants acquired the property from Millaudon, and are in privity with the title derived from the Circuit Court of the United States, under the proceedings for confiscation. There is no impeachment of these proceedings in the bill.

The plaintiffs and defendants are citizens of Louisiana, but the bill charges that the plaintiffs claim the property under the third section and third article of the Constitution of the United States. This article empowers Congress to declare the punishment of

treason, and provides that no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted. The demurrer presents a number of objections to the bill, including the objection to the title of the plaintiffs, and this was the only matter argued to the Court. The Court decided that the plaintiffs had no title, but that the adjudication by the Circuit Court was conclusive against Pasteur and his heirs.

III.

POINTS AND AUTHORITIES.

1. On behalf of the appellees, we deny that Pasteur has been attainted of treason by Act of Congress or by judgment of the Circuit Court of the United States. The Act of Congress cited in the proceedings, (sections 5308, 5309, 5311, of the Revised Statutes of the United States,) does not define nor provide punishment for treason, nor has there been any prosecution of Pasteur for any crime of treason, nor any conviction. The United States, recognizing the fact that there was a war existing within her boundaries, provided in the Act of the 6th of August, 1861, in respect to the subjects for capture, and the mode for condemning captured property. The property to be captured is defined. It is property employed in aid of the insurrection, with the consent or acquiescence of the owner or his agents.

The judicial inquiry does not extend beyond the discovery of the facts of such employment, with consent or with sufferance on the part of the owner or his agent. There is no prosecution instituted against the owner for the consent or the sufferance.

Union Insurance Co., 6 Wall., 760.

Miller vs. United States, 11 Wall., 268, 308, 368; 20 Wall., 92; 2 Otto, 187; 16 Wall., 310; 3 Dallas, 199; 6 Cranch, 286.

II.

The attainder of treason referred to in the third article of the Constitution is a judicial attainder. There must be a prosecution

and a conviction; but Congress is not permitted to require or to permit the Court to affix to the judgment any consequence of forfeiture, except during the life of the convict. Nor can any Court diminish the right of persons not convicted to any inheritance because of the conviction. Beyond this the prohibition of Congress to declare punishments for crimes does not extend, except that by the Eighth Amendment "cruel and unusual punishments" are forbidden to be inflicted in any case.

There is nothing to be found in the record of the Circuit Court exhibited by the bill, nor in the Act of Congress, to warrant the allegation of the bill, that the ancestor of the plaintiffs was attainted of treason, and that there was a forfeiture of his estate in this property as a part of his punishment.

1 Bouvier, Dic. Attainder, 165.
4 Stephens, Com., Ch. 23, 545.
1 Ibid., Ch. 12, p. 456.
1 Chitty, Cr. Law, Ch. 17, p. 223.

III.

No Act of Congress prior to the one under consideration had regulated captures on land, and upon internal waters, in a time of war. There are authorities of weight in favor of the conclusion that captures can only be made in a public and proclaimed war, conducted according to the law of nations, and that capture is not admissible in civil wars or in cases of insurrections. For in the latter case the adverse parties are members of the same State, governed and governable by the same laws, and only answerable for their acts under the conditions of those laws to the government. The Act of Congress of 1861 was made by Congress with the exclusive power in the United States, to declare war, suppress insurrection, and to regulate captures on land and water. The Act is directed as an admonition and instruction to the commander of the armies and the navy. He is informed that certain objects described in the Act are lawful objects for the exercise of his

martial force. He is instructed to cause these objects to be seized, confiscated and condemned. In a Court of the United States, and on the chancery side of such a Court, it can hardly be a subject for contestation that the proceedings for confiscation and condemnation cannot be impeached, nor their original validity questioned therein.

The powers of Congress are plenary and exclusive. None can call the Congress to account for the form of warfare, or the rules of capture or conquest it may establish under the powers granted by the Constitution. In this case there was condemnation and a sale of the property captured and condemned, and sixteen years have elapsed without opposition to the decree, and now collaterally. The record shows, too, that the ancestor and the heirs had never paid the price for the property. The equity of the bill, had there been no seizure, condemnation or sale, would have been infirm. The frame of the bill seems to assume that the United States have condemned this property absolutely, and took it for themselves, and then reserved to the children of the occupant the remainder after his death as a benefaction. The bill is to carry into effect this benevolent disposition. There is, however, no fact to warrant such a conclusion of unwonted charity in the transcript filed in the cause.

IV.

Congress prescribed, that property of whatever kind, found to have been employed by the Confederate States, with the consent or sufferance of the owner, should be seized, confiscated and condemned as a lawful subject of capture, and the property described in the bill having been seized, confiscated, condemned and sold by the officers of the United States as property adjudicated to the United States, according to their own statutes, there would seem to be no room for discussion in a Court of the United States as to the effect of such an adjudication and sale. If the Confederate States had recaptured New Orleans, and maintained their authority, there would have been a *jus postliminii*, which possibly might

have been operative, and perhaps would have been effective—possibly not. But the Courts of the United States have maintained these acts as obligatory, not only during the war, but when the war terminated. Judgments of condemnation after peace was made have been entered, and the rights under the Acts of Congress established.

So there is no reason to assume that the law of nations has invalidated this judgment nor cancelled the title made before the war terminated. A late writer says: "The private property in land and houses, including property in them held by others not as absolute owners, was at an early period regarded as exempt from appropriation by a belligerent invader. Land being immovable, its fate was necessarily attendant on the ultimate issue of hostilities. An invader could not be reasonably sure of continued possession for himself, nor could he give a firm possession and title to a purchaser. And these impossibilities reacted upon his mind so as to prevent him from feeling justified in asserting the land to be his."

2 Black, 635.
W. E. Hall, Intern. Law, section 139, p. 360.
Confiscation Cases, 20 Wall., 92–117.
Heffter, Droit Intern. pp. 254, 255, section 135.

But this restraint was self-imposed. In case of a successful invasion and a permanent occupation of the territory, the victor can maintain his seizures, confiscations and condemnations. The owner who had been ejected by the fact and force of capture, has no appeal except to the victor—the loser pays.

Cases above cited.

The principle in respect to property in lands and houses is to leave them in the possession of their owners. But considering that the whole matter is subject to the empire of force, it cannot be denied that this imposes the law, and the lands of the vanquished may be confiscated and sold for the profit of the conqueror

or to compensate his troops; but if the enemy be expelled, or if there be a treaty of peace, the inhabitants who were dispossessed may reoccupy their property.

1 Proudhon, Domaine du propriete, 388–392.
Halleck, Intern. Law, Ch. 32, sections 22, 23, p. 798, 79.
Wheaton, Int., section 346.

V.

The defendants are, as the bill states, claimants under Millaudon, the original vendor to the Pasteurs, who established his mortgage before the Circuit Court, and exhibited a vendor's lien, as well as hypothecation, and that the purchasers had paid nothing toward the property. Such property lost its value by the blockade and the annihilation of the production, compression and shipment of cotton from 1861 till 1866.

There was no inducement to them to question the action of the United States, nor is there any intelligible cause for the suit by their posterity.

JOHN A. CAMPBELL,
THOMAS L. BAYNE,
For Appellees.